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Investor Guide to Europe 2014



Welcome

Welcome to our first edition of our “Investor guide to Europe”. This document is the result of a partnership between DTZ, global leader in property services and Herbert Smith Freehills, the international law firm.

The aim of this guide is to help investors’ make informed decisions when entering new markets across Europe.

This guide becomes increasingly relevant when the share of investment by non-Europeans has reached a new record level. In fact Europe attracts more cross border capital than any other region across the globe. A trend that we expect to continue as the recovery in Europe’s commercial real estate markets becomes more broad-based.

Our guide provides high level data on the investment market and key information on legal context and taxes for 26 countries across Europe.

The guide includes:

- a short summary of the market
- a selection of key market indicators (invested stock, liquidity ratio, investment volume, prime yields in the main office, retail and industrial markets, and investment activity by asset type and source of capital)
- a “Legal and tax” section describing for each country the main aspects of property laws (types of ownership and rights affecting ownership), the key stages in the acquisition process, commercial leases and taxes.

We hope that the guide will prove a useful resource to those who are seeking a first overview and understanding of the investment process across different European jurisdictions. The guide owes much to the co-operation of the law firms who have contributed chapters on their respective jurisdictions. We would like to express our gratitude to them for their input.

We hope you will find this publication useful and informative.



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DTZ... THE FASTEST GROWING CAPITAL MARKETS ADVISOR IN EMEA

With an integrated network of capital markets professionals throughout EMEA, our comprehensive presence in local markets enables us to provide our clients access to the best opportunities each market has to offer.

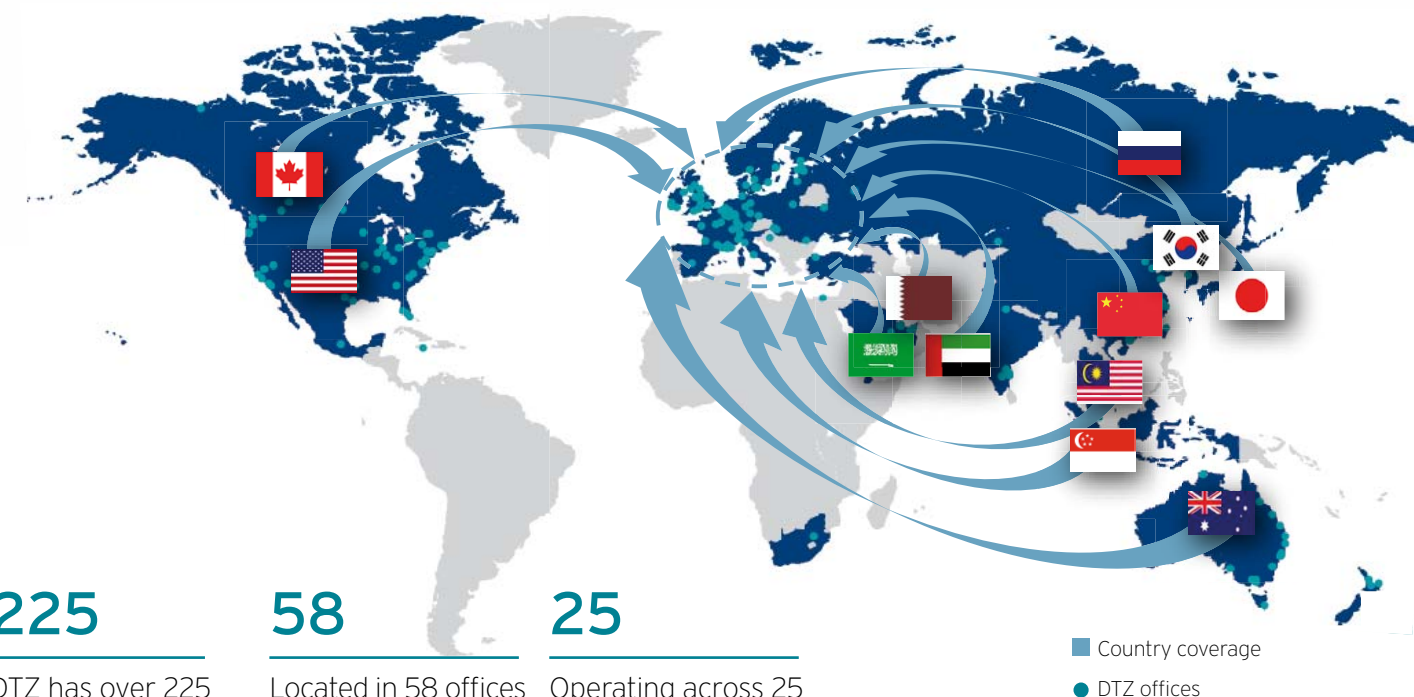
Our investment professionals provide impartial advice on how to achieve your financial objectives and maximise the value of your real estate.

We provide a comprehensive range of services, including :

- Disposal and acquisition of assets and portfolios
- Due diligence
- Negotiation
- Strategic advisory services
- Joint venture structuring
- Corporate finance and debt advisory services
- Site acquisition and development advice



INTERNATIONAL CAPITAL MARKETS TEAM



225

DTZ has over 225 Capital Markets professionals throughout EMEA

58

Located in 58 offices

25

Operating across 25 countries

DTZ's International Capital Markets team ensures unparalleled direct access to the key pools of investor capital globally.

We facilitate cross border investment into the EMEA region by identifying and tracking new sources of capital, and through building relationships with new investors.

Working together with DTZ's strong Asian platform, we also help bring cross border capital into the EMEA region from throughout Asia.

A global approach enables our team to target major pools of capital and ensures comprehensive investor coverage when marketing major investment opportunities.

HERBERT SMITH FREEHILLS

We are one of the world's leading law firms. We advise many of the biggest and most ambitious organisations across all major regions of the globe. Our clients trust us with their most important transactions, disputes and projects because of our ability to cut through complexity and mitigate risk. We can help you thrive in the global economy. With 2,800 lawyers in offices spanning Asia, Australia, Europe, the Middle East and the US, we can deliver whatever expertise you need, wherever you need it. Our international real estate team acts for many industry key players on the most innovative and sophisticated transactions and projects. Clients benefit from our understanding of the complexities of the real estate market and the breadth of our

hands-on, commercial experience. A large part of our real estate practice is made up of the work we undertake for international clients and we are known for our expertise in explaining and then structuring transactions to optimise their returns.

Our team provides end-to-end service that encompasses the full range of real estate transactions including fund establishment, fund raising, M&A, acquisition and disposals, development, joint ventures, leasing, financing, restructuring, litigation and local law regulatory advice. We structure transactions to ensure attractiveness to investors.



HERBERT
SMITH
FREEHILLS

We have over 100 real estate lawyers based in London, Paris and across the EMEA region and have the depth of expertise and resource to handle the largest transactions. Our understanding of the ever-changing market and insight into new developments enables us to provide a cutting-edge, full-service real estate offering across Europe, the Middle East, Russia, Asia and Australia.

In addition to real estate mergers and acquisitions, investment, development, leasing and joint ventures, we advise on, design and deliver complex, tax-driven investment structures using a variety of onshore and offshore vehicles and market-leading real estate financings and restructurings.

OUR INTERNATIONAL PRESENCE

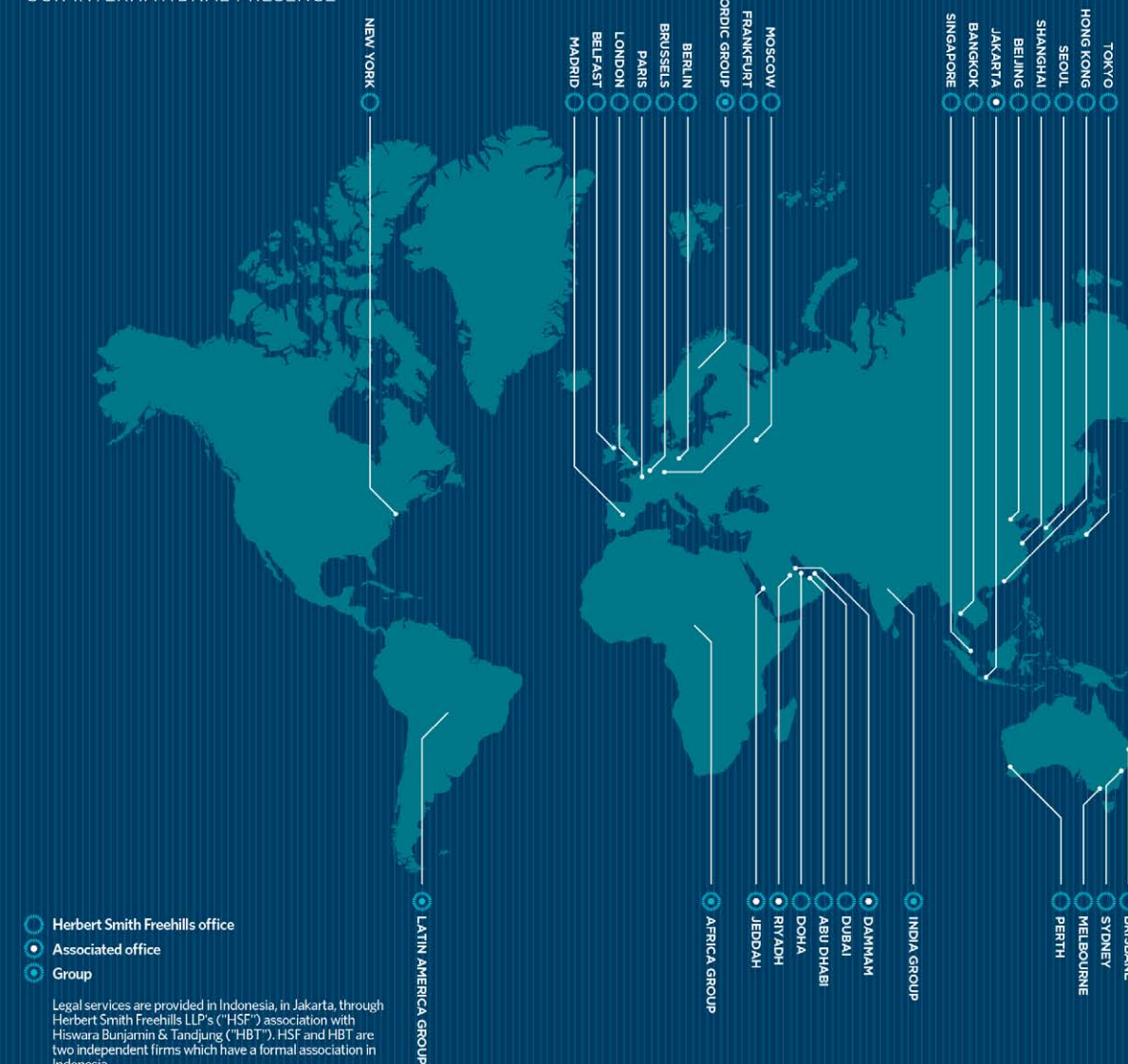
























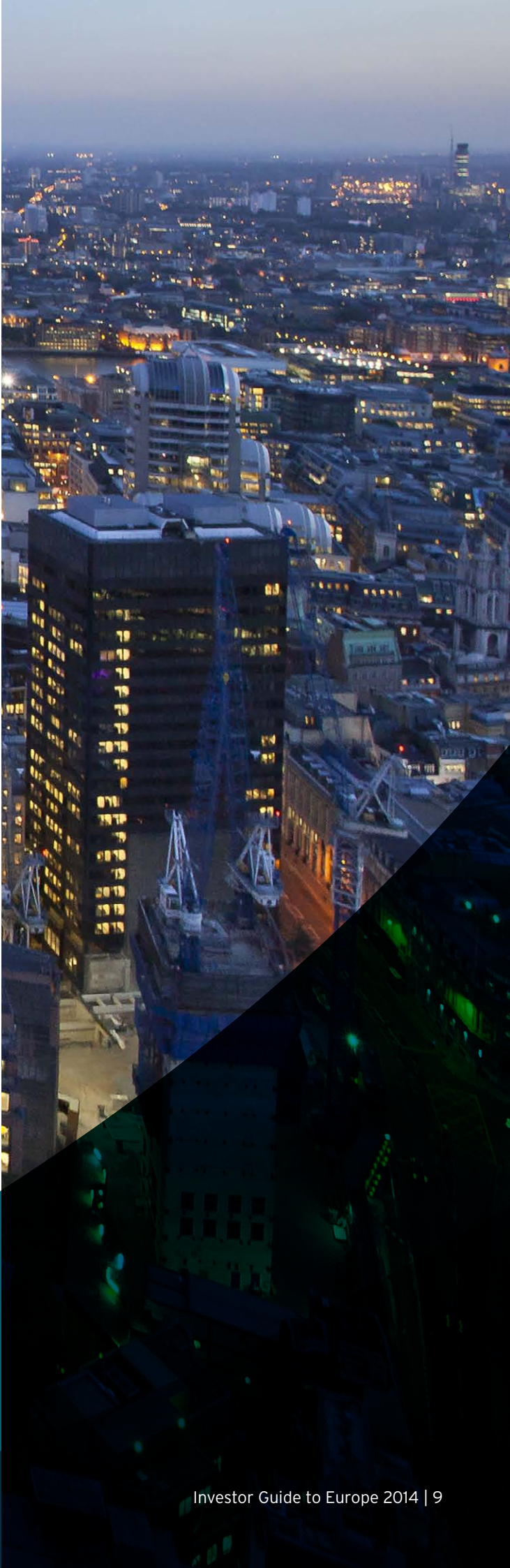




Table of content

	Belgium	10
	Czech Republic	14
	Denmark	18
	Estonia	22
	Finland	26
	France	30
	Germany	34
	Hungary	38
	Ireland	42
	Italy	46
	Kazakhstan	50
	Latvia	52
	Lithuania	56
	Luxembourg	60
	Netherlands	64
	Norway	68
	Poland	72
	Romania	76
	Russia	80
	Slovakia	84
	Spain	88
	Sweden	92
	Switzerland	96
	Turkey	100
	Ukraine	104
	United Kingdom	108
	Contacts	113



BELGIUM



Despite being relatively small, Belgium's investment market has benefited from above average levels of liquidity. The position of Brussels as the Capital of Europe attracts European investors from France, Germany and the Netherlands.

Overall activity is dominated by domestic investors, representing around two-thirds of total activity. More recently investors from the Middle-East and Asia have been active in the market. Investments are concentrated in the major cities of the country and the capital, Brussels, attracts around 50% of the total investment volume.

The investment market in Belgium is mainly dominated by institutional investors (such as insurance companies) or Belgian REITs for which legislation came into effect in 1995. German open ended funds are also active in the Belgian market.

The Belgian investment market has experienced increasing activity since 2009, with a total investment volume above EUR 2bn in 2013. The recovery in activity is expected to continue to push volumes above long run average trends.

The majority of investment, close to 60%, is concentrated in the office sector. Competition for core office assets is increasingly placing yields under downward pressure. Retail and healthcare (nursing homes) assets remain sought-after by investors as they constitute secure assets and a good way to diversify portfolios.

Market sizing

	Belgium	Europe
Invested stock* (Total stock)	EUR 55bn (EUR 170bn)	EUR 3,380bn (EUR 8,150bn)
Liquidity ratio* (10y average)	4.0% (5.0%)	4.0% (4.5%)
2013 volumes (10y average)	EUR 2.0bn (EUR 2.5bn)	EUR 139bn (EUR 135bn)

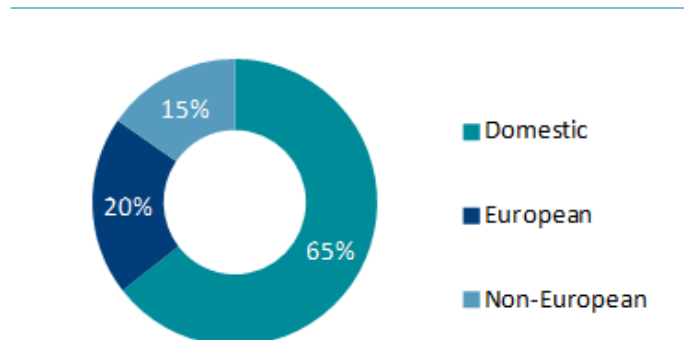
* 2012 figures

Market pricing - Brussels/Antwerp (Q4 2013)

	Office (Brussels)	Retail (Brussels)	Industrial (Antwerp)
Current Yield	6.15%	5.00%	7.70%
Min/Max (10y)	5.50-6.50%	4.25-5.75%	6.80-8.30%
Yield definition	Net initial yield		

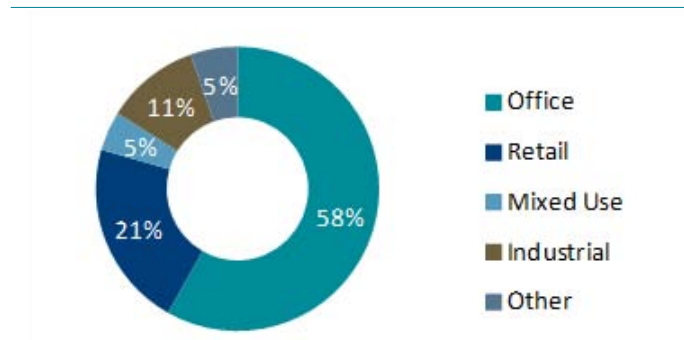
Source : DTZ Research

Investment activity by source of capital, 2013



Source : DTZ Research

Investment activity by asset type, 2013



Source : DTZ Research

PROPERTY LAW

OWNERSHIP AND OTHER RIGHTS *IN REM*

→ Freehold

Ownership

- Under Belgian Civil Code ("*BCC*"), "ownership" is defined as the right to enjoy and dispose of assets in the most absolute way, so long as no unlawful use is made of it. Other various subsidiary rights *in rem* are derived from full and exclusive ownership.

Co-ownership

- Ownership of a property or a group of properties divided into co-ownership units among the various persons who own, each:
 - privately-owned areas;
 - rights over (i.e., share in) the common areas.
- The division of the property is laid down and described in regulations which identify each unit with a number, indicate its location, and contain a complete description of the private and common areas of the property.
- Each co-owner has a right to use the common areas, and each shares the related service charges.

→ Leasehold

Long-term lease or long lease (*emphytéose/erfpacht*)

- Is the right to use without limitation (incl. the erection of buildings) the real estate concerned in return for payment of an annual ground rent.
- Is a right *in rem* that can be mortgaged and transferred.
- Term is between 27 and 99 years and may not be extended by tacit renewal.
- Must be drafted under a notarized form and transcribed in the mortgage registry.

Building right or right to build (*superficie/opstal*)

- Is the right to own any building that he erects on someone else's real estate (land).
- Is a right *in rem* that may be mortgaged, and so may the buildings erected by the tenant on that land.
- Maximum term is 50 years (renewable).
- In return for payment or could be granted for free.
- Must be drafted under a notarized form and transcribed in the mortgage registry.

RIGHTS (*IN REM*) AFFECTING OWNERSHIP (FREEHOLD/LEASEHOLD)

→ Easement (*servitude/erfdienstbaarheid*)

- Is a use or burden imposed on a real estate (land/building) to permit the use of one's real estate (land/building) by another owner for specified use (e.g., right of way, etc.).
- Is exercised to the detriment of the real estate which it encumbers - servient land - and to the benefit of adjoining assets

which it enhance - dominant land.

- Easements are transferred with the related tenement.
- The owner of a dominant land may carry out any works required for the use or preservation of the easement but may not do anything that will aggravate the situation of the servient land.
- The owner of the servient land must allow the easement to be exercised without doing anything to restrict it.

→ Mortgage (*hypothèque /hypotheek*)

- Is the right *in rem* of a real estate asset granted by a debtor to a creditor as security for a money debt whereby the creditor (beneficiary) is given a preferential right over other creditors in the event of a forced sale of that real estate asset.
- Confers a *droit de suite* entitling a secured creditor to take possession of the asset, which has been offered as security, even if it is in the possession of a third party.

→ Pre-emption right

- Is the statutory option given to certain public authorities, because of general public interest purposes. This right is held by public entities and prevails over any rights of pre-emption held by private persons or entities.

ACQUISITION PROCESS: KEY STAGES

Foreign investors wishing to carry out real estate transactions do not need any prior authorisation.

In addition to the general provisions of the BCC, decrees issued at regional level (environmental and zoning regulations, registration duties, etc.) apply, depending on where the real estate is located: Flemish-, Walloon-, or Brussels Capital Regions.

Real estate deals are structured as an asset deal or share deal, i.e., purchase of the shares in the company whose asset is only the real estate.

→ Negotiations

- A non-disclosure agreement can be proposed by the seller/agents in order to allow the buyer access to the property, its information, and its documentation.
- The would-be buyer may issue a letter of intent that can be indicative or binding.
- Discussions can be pursued under a preliminary agreement whereby an exclusivity period during which due diligences can be carried-out and at the expiry of which the would-be buyer is expected to confirm or withdraw its initial intention/offer.

→ Private deed of sale (*compromis de vente/verkoopcompromis*) - Asset deal

- Usually, a private deed of sale is drafted and signed. It lays down and binds the parties with the terms and conditions of the sale.
- Without being exhaustive, essential clauses that should be added to the private deed of sale (asset deal) usually cover: the transfer/reservation of ownership until the purchase price is paid or the notarial deed is executed; the enjoyment and

possession of the real estate as well as the transfer of risk; the seller's guarantees; the applicable zoning and urban planning laws; any condition precedent (soil pollution, permits, loan agreement, energy performance certificate, etc.)

→ Notarial deed of sale - *Asset deal*

- Is usually the deed according to which ownership is actually transferred from the seller to the buyer; it must be notarised and is the fulfilment agreement of the private deed.
- As a principle, there is no re-negotiation of the terms and conditions of the private deed.
- The notarial deed of sale will be transcribed in the mortgage registry by the notary public.

COMMERCIAL LEASES

CIVIL LEASES (OFFICES)

Governed by specific provisions of the BCC and other laws, such as tax or environmental regulations.

In principle, office lease contracts are governed by BCC's specific provisions.

→ Form - Duration - Rent

- No legal minimum or maximum duration; the most common is a nine-year lease with a break option for one or the other party at the end of each three year period (by giving prior notice to the other party).
- Rent (which is VAT-exempt) is an essential element of a lease ("No rent, no lease")

→ (Landlord) Lessor's principal obligations

- To deliver and maintain the leased real estate according to the use for which it was leased.
- To allow the lessee to enjoy peacefully its right of use and occupation over the leased real estate.
- To be responsible for and bear the charges of major repairs and any damage caused by an Act of God.
- To guarantee the lessee any and all (latent) defects of the leased real estate.

→ (Tenant) Lessee's principal obligations

- To use the leased real estate according to the standard of care of a "*bonus pater familias*" in compliance with the agreed purpose.
- To pay the rent and, as the case may be, charges related to the leased real estate.
- To be responsible for damage caused by fire, unless he/she proves that he/she did not cause the fire.
- At the end of the lease, return the property in the state that is described in the incoming inventory of fixtures, which is mandatory.
- To be liable for deterioration and losses caused by the act of

persons supervised by the lessee or by its sub-lessee, if any.

The lease contract binds third parties, including any new owner, unless otherwise stipulated in the lease contract (which is unusual) and on condition that the contract has a "fixed" date. The registration of the lease will give the lease contract a "fixed" date.

COMMERCIAL LEASES (RETAIL)

BCC's specific provisions will apply to commercial (retail) lease contracts where the Commercial (retail) Lease Act ("CLA") of 30 April 1951 does not deal with or cover a specific issue.

The CLA's provisions are mainly mandatory, i.e., they apply, as a matter of principle, irrespective of the agreement by the parties; the protected party may waive its right to invoke such a mandatory provision, but exclusively once the relevant right has arisen.

The CLA applies to real estate lease contracts in which the lessee—with lessor's consent—devotes to carrying on a retail business or activity of an artisan who is directly in contact with the public.

→ Duration - Rent

- The duration may normally not be less than nine years.
- The lessee may terminate the agreement at the end of each three-year period with six months prior notice; in certain circumstances the lease contract entitles the lessor to terminate the agreement at the end of each three-year period.
- The parties may terminate the lease contract early by mutual consent provided that this consent is recorded in a notarial deed or in a statement made in before a competent judge.
- The competent judge may—under specific conditions and on request of the lessee or the lessor—review or adapt the rent at the expiration of each three-year period, and this based on the principles of fairness and equity.

→ Lease renewal

- The lessee is entitled—with a preferential right over any other person—to renew its lease for the continuation of the same trade.
- This right is limited to three renewals, as a principle each for a term of nine years.
- The renewal is governed by very specific deadlines and procedure. The formalities laid down by the CLA must be strictly complied with.
- Any disagreement between the parties with respect to the conditions of the renewed lease contract will be submitted to a judge who settles the dispute according to the principles of fairness and equity.
- The lessor may only refuse to renew by invoking one of the grounds listed in the CLA, and even then an indemnity payment must be paid in some scenarios.
- This indemnity (one, two, or three years' rent) is set by the CLA; the judge may grant more than these sums if the lessee can demonstrate that the value of its loss is greater than the indemnity.

→ Renovation/alteration works by the lessee

- BCC provisions apply to those works that do not affect the use or the structure of the real estate.

- Under the CLA, the lease contract may not forbid the lessee to carry out renovation/alteration works that are useful to the lessee's business whose costs do not exceed the sum equivalent to three years' rent.
- The execution of such renovation/alteration works is governed by specific deadlines and procedure.

→ Subletting/assigning of lease by the lessee

- Under the CLA, any prohibition of assigning the lease or on subletting the real estate may not prevent the assignment or sublease from being made together with any assignment of the business.

→ Transfer of ownership of the leased property

- Even if the lease contract states that the buyer (new lessor) is entitled to remove/evict the lessee after it acquires the leased property, the buyer (new lessor) may do so only if certain circumstances, deadlines, and procedure (as set out in the CLA) are complied with.

TAX

→ Direct acquisition of a property

- The acquisition of a property will give rise to registration duties (*droits d'enregistrement/registratierechten*) and/or value added tax (VAT).
- Registration duties are largely regional taxes. The Flemish-, Walloon-, and Brussels Capital Regions all levy tax on the transfer for consideration of immovable property in their territory. The rate is 10% in the Flemish Region and 12.5% in the other regions. It is applied to the agreed sale price to be increased by related charges (such as land surveying or soil decontamination costs, but not legal or notary fees). The rates will be substantially reduced (to 4% in the Flemish Region, 8% in the Brussels Capital Region, and 5% in the Walloon Region) if the property is sold to a professional reseller of immovable property.
- However, the sale of new buildings and the land they are built on is subject to VAT (and exempt from registration duties) if the seller is either a professional reseller (for VAT purposes) or any other person who opts to subject the sale to VAT. A building is considered new until 31st December of the second year following the year of its first occupation. The VAT rate is 21% (but for some cases, a reduced rate of 6% or 12% may apply). The taxable amount is the purchase price or the normal market value, whichever is higher. A sale that is subject to VAT is exempt from the proportional registration duties (of 10% or 12.5%), but it will be registered at a fixed registration duty of 50 EUR.

→ Acquisition of shares in a company holding a property

- Acquiring a company's shares will not give rise to registration duties or VAT. In principle the seller will not have to pay capital gains tax. Subject to certain conditions, capital gains on shares are exempt when derived from the alienation of shares unless the seller is a large company, in which case the rate will be 0.412%. Under certain circumstances, the tax administration could consider the sale of shares to constitute an abusive prac-

tice, in which case the sale could be treated as a sale of the underlying real estate.

→ Special tax aspects

- Real Estate Investment Trusts (*SICAF Immo-bilière/ VastgoedBEVAK*) that meet all the relevant conditions are formally subject to the Belgian corporate income tax regime, but they are taxed only on a limited tax base not including business profits. The tax base is limited to abnormal or gratuitous advantages received as well as disallowed expenses. The withholding tax on dividends distributed by a Belgian REIT is 25%, which can be reduced to 15% if 80% of the held real estate consists of qualifying residential real estate. Dividends received from a Belgian REIT will never qualify for the participation exemption regime and are, consequently, added to the taxable base of the receiving company.
- According to Belgian thin capitalization rules, interest payments on loans will not be tax deductible to the extent that they exceed a debt/equity ratio of 5:1, and the recipient of the interests is either a company of the same group or a company that is either not subject to income tax or in the hands of which the interest received benefits from a tax regime that is substantially more beneficial than the one applicable in Belgium. Interest costs will also not be tax deductible if they are not at arm's length.
- The notional interest deduction is a Belgian tax incentive that grants taxpayers a deduction of a fictitious interest expense on the corrected net equity of the company. However, Belgian REITS, as described above, are not eligible for the regime. The notional interest rate for 2014 is set at 2.742% for large companies and at 3.242% for small and medium-sized enterprises. The regime offers substantial tax planning opportunities.



CZECH REPUBLIC



Market sizing

	Czech Republic	Europe
Invested stock* (Total stock)	EUR 30bn (EUR 115bn)	EUR 3,380bn (EUR 8,150bn)
Liquidity ratio* (10y average)	3.5% (5.5%)	4.0% (4.5%)
2013 volumes (10y average)	EUR 1.2bn (EUR 1.2bn)	EUR 139bn (EUR 135bn)

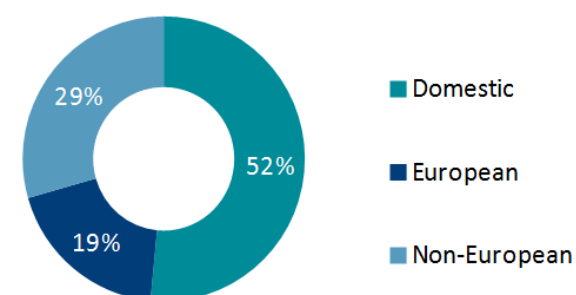
* 2012 figures

Market pricing - Prague (Q4 2013)

	Office	Retail	Industrial
Current Yield	6.25%	6.00%	8.00%
Min/Max (10y)	5.25%- 8.30%	5.50%- 8.00%	6.50%- 10.00%
Yield definition	Gross initial yield		

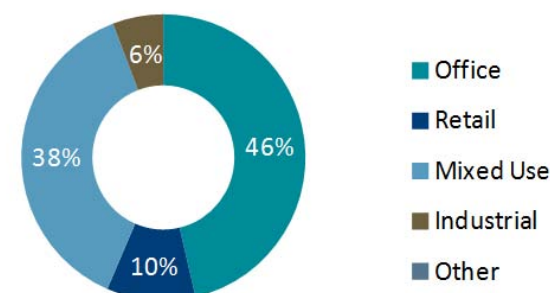
Source : DTZ Research

Investment activity by source of capital, 2013



Source : DTZ Research

Investment activity by asset type, 2013



Source : DTZ Research

The Czech investment market has matured over the past decade and is well rated due to its stability over the recent years. When compared to other Central and Eastern European (CEE) markets, the Czech Republic sits alongside its neighbour, Poland, as the most attractive markets in the region.

As with other CEE markets the Czech Republic has attracted a relatively high share of cross border investment, although in recent years domestic investors have increased their share, with the market broadly balanced between domestic and cross border activity. In particular the market has seen strong activity from German and Austrian investors, together with capital from the UK and USA.

Whereby large institutional investors are targeting mainly prime office or retail properties in Prague, domestic investors are active across the entire country, as well as looking at assets with value uplift potential. In recent years we have seen an increase in private capital investments. The listed sector is a very small part of the market.

The inflows of new investors are very encouraging and should support further growth in the market. Although the focus of activity has been towards offices and mixed schemes, the logistics sector has seen some interest due to stronger occupier demand.

Availability of debt is improving, with a mix of German, Austrian and local lenders. Activity is currently focussed on core assets.

PROPERTY LAW

As part of the re-codification of Czech private law, as of 1 January 2014 the New Civil Code became effective, introducing numerous changes and new legal institutes to the Czech law, in particular with respect to legal relationships regarding real estate.

TYPES OF OWNERSHIP

- Czech law differentiates between the following types of ownership: sole ownership, co-ownership and matrimonial co-ownership.

Ownership

- Owner generally entitled to freely dispose of things in his ownership.
- Ownership may be acquired under a purchase agreement, contract of donation or another agreement, inheritance, decision of a state authority, or by virtue of other circumstances stipulated by law, such as usucaption (acquisitive prescription).
- Transfer of ownership (and the creation of other rights in rem) regarding real estate generally to be entered in the Land Registry; registration constitutes ownership (if the law not states otherwise, e.g., regarding usucaption); therefore, ownership to real estate may only be transferred on the basis of a legal title (e.g., a purchase agreement) followed by registration in the Land Registry.
- The environmental context :
 - under the applicable laws on protection of the environment, a party causing ecological damage (such as contamination of land) can be held liable.
 - if the polluter is not known, the owner of the contaminated real property may be held liable for the contamination as a subsidiary.

Co-ownership

- All co-owners incur rights and obligations jointly and severally from legal acts relating to the joint object.
- Decisions of co-owners regarding the management of the co-owned object by either a simple or qualified majority of votes, calculated on the basis of the sizes of their respective stakes.

Accessory co-ownership

- Special type of co-ownership.
- A thing is in accessory co-ownership if it is jointly co-owned by owners of separately owned things that create a locally and purposely defined complex and serves to a joint purpose, whereas these separate things cannot easily be used without the jointly co-owned thing (e.g., a road in an industrial area with more sites co-owned by the particular owners of the sites).
- The co-ownership interest in the jointly co-owned thing cannot be transferred without the transfer of ownership to the separate thing.

RIGHTS AFFECTING OWNERSHIP

→ Right of construction

- The right in rem to have a construction on a plot.
- Establishment based on an agreement and registration in the Land Registry.
- Temporary nature as the main feature of the right of construction, can be established for up to 99 years, but can be extended later.
- Transferable, and may also be encumbered in favour of third parties.

→ Easements (*servitudes, real easements*)

- Two types of easements in the New Civil Code:
 - servitudes affect the owner in the way that it must suffer something or refrain from doing something in favour of a person (personal servitudes) or every owner of a plot (land servitudes), e.g.:
 - right of way,
 - right to place utility infrastructure.
 - unlike in the case of personal servitudes, land servitudes do not cease to exist after transfer of ownership to the entitled plots.
 - real easements impose a duty to the owner of a plot to give something or to act in favour of another.
- Both types of easements are acquired upon registration in the Land Registry.

→ Mortgage

- Real estate may be pledged in favour of the financing bank already when negotiating the loan documentation (future mortgage).
- Mortgage is acquired upon registration in the Land Registry

→ Pre-emption right

- Might be stipulated as a right in rem upon registration in the Land Registry
- Owner of real estate burdened with a pre-emptive right obliged to make an offer to the entitled person, if he intends to transfer the ownership to the real estate to a third party.

→ Prohibition of transfer or encumbrance (e.g. mortgage) of real estate

- Effective towards third parties only as a right in rem registered in the Land Registry.

ACQUISITION PROCESS: KEY STAGES

→ Preliminary contracts

- Heads of Terms or Letter of Intent
 - used prior to entering into the transfer document, contain basic economic terms of the transfer document and other corresponding matters (e.g., exclusivity, confidentiality).
 - usually not a legally binding document, but the party could be held liable for damages caused on the grounds of pre-contractual liability if the party won't negotiate in good faith.
- Agreement on Future Agreement (pactum de contrahendo)
 - one or both parties to the agreement obligated to enter into an (future) agreement that is determined in at least in a general way, in an agreed period (otherwise until 1 year) and without reasonable delay after receiving notification of the other party.
 - if the obligated party does not enter into a future agreement, the conclusion of the agreement might be claimed by a court.

→ Transfer of real estate

Asset deal

- The owner of the real estate and the investor conclude a purchase contract under which the ownership right to the real estate is transferred to the investor.
- The investor becomes the new owner of the real estate upon the transaction's entry in the Land Registry.
- Main advantage is the universality - the asset deal may be used when the owner of the real estate is a natural person or if the owner of the real estate is a company (a legal entity); also provides the possibility of adjusting the object of the investment transaction with respect to the special interests and needs of the investor, by identifying the real estate in detail in the purchase contract.

Share deal

- Is the reciprocal undertaking to sell and to purchase where both parties are committed to transfer the property
- The transfer remains subject only to the fulfilment of condition precedents.

→ Deed of sale

- The subject of the transaction is not the real estate but the company as the owner of the real estate.
- The main advantage of acquiring real estate via a share deal is the avoidance of taxes, especially real estate transfer taxes and VAT.

- The legal owner of the real estate remains the same, the acquisition of the real estate has almost no legal impact on the contracts concluded with respect to the real estate (provided that the contracts do not include a 'change of control' clause).

COMMERCIAL LEASES

→ Lease

- No strict formal requirements for an agreement on the lease of business premises set by the New Civil Code.

→ Term and termination

- Principle of freedom of assignment of the lease by the tenant definite or indefinite; if the parties do not regulate the lease term contractually, the lease term is indefinite.
- If the parties agree on a lease term that is longer than 50 years, it is deemed that the lease term has been concluded for an indefinite amount of time, whereas in the first 50 years the lease can only be terminated on the basis of the agreed upon reasons and in the agreed termination period.
- Lease agreements concluded for an indefinite period can be terminated without stating a reason - the period of notice is six months, unless the party has serious reason for which the termination period may be three months; the parties are free to agree on the reasons for the premature termination of the lease agreement, or on another termination period.
- Lease for a definite term can be terminated under statutory provisions, unless stipulated by the parties otherwise.

→ Rent

- The contracting parties are generally free to negotiate the rent price and, therefore, any rent increase.
 - the rent increase is usually bound to some objective criterion, such as the inflation rate or some kind of index (e.g., the consumer price index)
- Usually, regulation of the tenant's payments for auxiliary services provided by the landlord according to the lease agreement (e.g., electricity, cleaning).
- Types of rent:
 - fixed rent
 - turn-over rent (increase of a rent in respect of tenant's turnover)
- A security deposit (or a bank guarantee) amounting to three to six months' rent is common practice.

→ Sublease

- If the parties do not stipulate otherwise, the tenant is allowed to sublease the premises only with the consent of the landlord; the consent must be in writing.

→ Transfer of tenant's business

- Tenant is entitled with the landlord's prior written consent to transfer the lease in connection with a transfer of the business activities performed in the leased premises.

→ Change of ownership

- Generally, no right of contracting party to terminate the lease only because of a transfer of the ownership to a real estate.
- Lease to be distinguished from usufructuary lease (in Czech: pacht) as a new legal institute introduced by the New Civil Code.

TAX

→ Direct acquisition of a property

- Real estate transfer tax must be paid on the transfer of title to real estate for consideration. The current tax rate generally amounts to 4 % of the purchase price (provided the purchase price including VAT, if applicable, is higher than an administrative value calculated in accordance with the respective tax laws). The seller is liable to pay the real estate transfer tax, with the buyer as a guarantor. From 2014, the parties may agree that the buyer must pay the tax (the seller is not a guarantor in this case).
- In general, real estate transfer tax is payable by the end of the third month following the month when registration of the transfer was made in the Land Registry. An exemption from the duty to pay real estate transfer tax is, inter alia, allowed for the first transfer of a family house or an apartment (including a plot of land), if occurred within 5 years from the moment an occupancy approval has been issued. To the contrary, a contribution of real estate into a company's share capital is subject to tax from 2014.
- From 2014, the transfer of a built-on plot is only tax-exempt (VAT) if the building situated thereon complies with the 5-year statutory period. This has a significant impact e.g. on the sale of newly-built houses and apartments, where the transfer of plot is now subject to VAT (21 % or 15 %). Tax exemption for the transfer of buildings applies on compliance with the 5-year statutory period (otherwise taxed at 21 % or 15 % for family houses and residential buildings of a limited size).

→ Acquisition of shares in a company holding a property

- Upon their acquisition, the shares of a real estate company are not subject to real estate transfer tax. No value added tax (VAT) or capital duty is payable on shares deals.
- At the sale of Czech shares, capital gains derived by non-Czech tax residents are subject to income tax (of 15 % for individuals and 19% for corporations), irrespective whether the buyer of shares is a Czech resident or not. In addition, the buyer is obliged to withhold a security tax of 10% upon payment, if the purchase price is paid to non-EU/EEA residents. The Czech Republic, however, loses the right to tax under the most of tax treaties (except for e.g. Germany).
- Capital gains derived by EU/EEA parent companies may also qualify for participation exemption, if both the parent company and the Czech subsidiary have the required legal form and a shareholding of 10 % (of a share capital or voting rights) is held for at least 12 months. Capital gains derived by individuals qualify for tax exemption, if they are held for more than 5 consecutive years (in case of an interest in a limited partnership or a limited liability company) and 3 consecutive years (in case of shares acquired in a joint stock company in 2014; other requirements apply to former acquisitions of shares).

→ Right of Construction

- As for the right of construction, tax exemption only applies if this right includes a building that has complied with the statutory period (otherwise taxed at 21 %). However, the seller may opt for taxation. VAT is paid by the buyer to the seller, and the seller must pay VAT to the competent tax authority.



Denmark is the smallest country in the Nordics in terms of size, and as a result the Danish property market does see below average levels of liquidity. Domestic investors tend to be more dominant, as in other Nordic markets.

Foreign investment has been restricted to flows from other European markets, notably from Sweden, Norway, Germany, the UK and the Netherlands. The most sought after assets are residential, high street and shopping centre retail and office properties in CBD and the Greater Copenhagen region.

Denmark also has a well established investor base of its own, with many institutional investors, listed property companies as well as some private investors.

The Danish market has lagged the recovery seen in other Nordic markets as investors and lenders have struggled with a number of problematic assets in the wake of the financial crisis. The situation is now starting to improve.

Overall, debt funding is relatively easy to obtain and as opposed to bank loans, mortgage loans (from mortgage banks) are interminable for the lender as long as instalments are paid. Moreover, in recent years there has been growing activity from institutional lenders (predominantly insurers) and private and institutional funds. Danish pension funds tend to stick with new developments and have in many cases forward funded projects in order to source deals at an early stage.

Market sizing

	Denmark	Europe
Invested stock* (Total stock)	EUR 40bn (EUR 85bn)	EUR 3,380bn (EUR 8,150bn)
Liquidity ratio* (10y average)	2.5% (3.5%)	4.0% (4.5%)
2013 volumes (10y average)	EUR 1.0bn (EUR 1.3bn)	EUR 139bn (EUR 135bn)

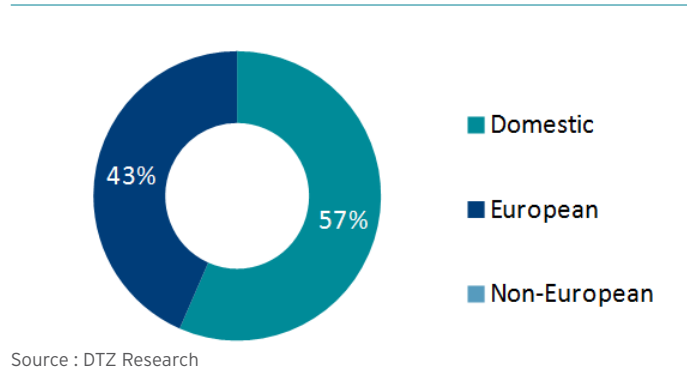
* 2012 figures

Market pricing - Copenhagen (Q4 2013)

	Office	Retail	Industrial
Current Yield	5.00%	4.75 %	7.50%
Min/Max (10y)	4.00-6.25%	3.25-5.75%	6.00-7.75%
Yield definition	Net initial yield		

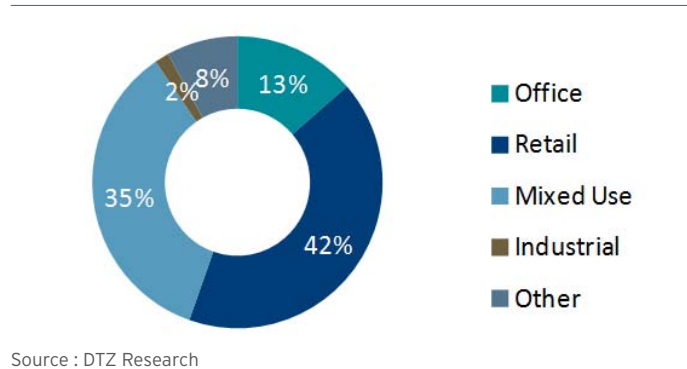
Source : DTZ Research

Investment activity by source of capital, 2013



Source : DTZ Research

Investment activity by asset type, 2013



Source : DTZ Research

PROPERTY LAW

TYPES OF OWNERSHIP

➔ Freehold - Ownership : «Ownership through an owner's share certificate to a cooperative housing association is also a possibility»

- Ownership is not defined by Law. The owner of a property has the right to use, receive the benefits of, and dispose of a property in the most absolute manner, subject only to a non-prohibited use.
- It is no validity requirement to register rights over real property with the Land Register, and thus an agreement is enforceable inter partes without registration. Any title, transfer or change on the ownership right must be registered on the local Land Registry in order to be protected against third party rights over the property. Most rights are registered.
- Apartment houses may be registered as one or several individual properties in the Land Registry, each with its own right of ownership. Membership of the owners' association is mandatory. The association is an administrative body which main role is to manage common areas and facilities. Each owner has a right to use the common areas.

➔ Leasehold - Commercial leases

- According to the Danish Business Lease Act the tenant has certain mandatory rights secured by Law.
- Basic rights of a tenant are protected against third parties by statute and do not require registration. Agreed terms which provide the tenant with better rights can be secured against third party rights by registration with the Land Registry.
- The tenant enjoys a right which may be mortgaged (although not registered), and in some cases transferred.

RIGHTS AFFECTING OWNERSHIP

➔ Easement

- Is a burden imposed upon a property, for the use and utility of another property (its owner and/or users) or other persons. As an attribute of the right of ownership, easements are transferred with the related property.
- Is exercised to the detriment of the property assets which they encumber - servient land - and to the benefit of adjoining assets which they enhance - dominant land.
- While the owner of a dominant land may, at its expense, carry out any work required to use or to preserve the easement, it is not entitled to do anything to aggravate the situation of the servient land; the owner of the servient land must allow the easement to be exercised without doing anything to restrict it.
- No strict limits applies as to what may be agreed in a document registered as an easement. Some formal limitations must be observed; real property transactions need to adhere to the so-called unity principle, under which it is illegal to dispose over part of a real property without formal division of said property prior to disposal. Only a whole unit can be transferred, and if one would like to sell part of a property, the property must be formally divided with the National Survey and Cadastre (if possible). To avoid circumvention of this rule, it has also been out-

lawed to establish rights of use for a part of a real property for a period of more than 30 years. This prohibition does not apply for the lease of buildings, however. Also, to avoid interference with public plans for land development, easements governing matters which may also be governed by local plans require approval from the local municipality prior to registration with the Land Registry.

- Must be registered in the Land Registry to be protected against third party rights. Registration fee is DKK 1,660.

➔ Mortgage

- A mortgage over a property in question is one (and the prevailing) method of securing a property loan and must be registered with the Land Registry to be protected against third party rights over the property.
- Entitles the lender to a preferential right over other creditors in the event of a forced sale of the relevant property as the mortgagees are covered in order of priority.
- The fee for registration of mortgages amounts to DKK 1,660 plus 1.5 % of the principal amount. If there is an existing mortgage registered (regarding the seller's loans) the variable part of the fee may be lower or even inapplicable.
- In general any property in Denmark may be mortgaged and there is no limit on the number of mortgages that may be created over the same property.

➔ Preferential claims and local planning

- Tax authorities, insurance companies, lessees, and in some cases utility suppliers may have third party protected rights over the real property for which a tax, fire insurance premium, lessee's claims, or utility bill is outstanding without registration. Such claims are enforceable through forced sales.
- Furthermore, the local planning regulation is applicable and enforceable against property owners regardless of registration with the Land Registry.

➔ Pre-emption right

- The tenants of residential leaseholds have mandatory pre-emption rights for properties with a minimum of 13 residential tenants. This threshold is lowered to a minimum of 6 residential tenants if the property contains residential tenancies only (as opposed to business tenancies). The pre-emption rights are mandatory and applicable in case of a transfer of the property or in case of change-of-control of the owner company (but not in case of change-of-control in the parent company of the property owning company).
- Other pre-emption rights by agreement must be registered in the Land Registry in order to be protected against third party rights.

ACQUISITION PROCESS: KEY STAGES

The Danish purchasing restrictions render it practically impossible for most foreign investors to make direct purchases of Danish real property without permission from the Ministry of Justice. It might be possible to obtain the permission if the property is sought acquired to establish a business in Denmark, whereas grant of permission is less likely if the targeted property is purely an invest-

ment and even less so if the targeted property is a holiday home or the like. Mainly due to these restrictions investors generally choose to establish a Danish legal entity to hold the property in question. This may be done even if the Danish company/subsidiary is established only with the purpose of acquiring the Danish property in question.

→ Negotiations

- In most transactions only the real estate agent, the parties and the parties' finance providers and lawyers would be involved. A heads of terms agreement and a non-disclosure agreement may be negotiated and concluded. This is unusual for smaller deals, though.
- Having identified the targeted property the prospective purchaser receives a bundle of property related documents from the real estate agent or the seller's lawyers. Often, the parties already informally agree on main terms such as price, hand-over date etc. at this early stage. The prospective purchaser, its lawyers, and other relevant advisers conduct a due diligence investigation and request relevant additional information. The purchase agreement is negotiated between the lawyers of the parties taking into consideration the findings of the due diligence investigation, and the purchase agreement is concluded.

→ Conditional purchase agreements

- A conditional purchase agreement is drawn up instead of an absolute agreement if certain conditions remain unsettled before the transfer can be completed. A conditional title deed can be registered with the Land Registry.
- A conditional purchase agreement provides for the terms and conditions of the sale whereas the final transfer remains subject to the fulfilment of certain conditions.

→ Payment of purchase price

- Typically when the purchase agreement is signed the purchaser makes an escrow deposit or provides a bank guarantee for the full purchase price. In deals involving larger, financially sound purchasers it may be agreed that no deposit or guarantee needs to be made or issued. Instead the purchase price is paid in full on the hand-over date.

→ Deed of sale

- Is the title deed according to which the ownership of a property is transferred from the seller to the buyer.
- The seller and the purchaser digitally sign the absolute title deed. The deed will be submitted to the Land Registry for registration. A conditional title deed is drawn up instead of an absolute title deed if certain conditions remain unsettled before the transfer can be completed.
- In general all sales are registered with the Land Registry, and a sale must be registered in order to be protected against third party rights. The seller clears mortgages and other registrations as agreed.

COMMERCIAL LEASES

The Danish Business Lease Act governs most aspects of business lease agreements (leases of buildings used for commercial purposes). As for business lease agreement entered into before 1 January 2001 certain exemptions apply.

The Act is generally considered well balanced, though a number of sections in favour of tenants are mandatory.

Most provisions of the commercial leases may be freely agreed by the parties, such as the initial rent (which can be fixed or variable) and the duration. However, commercial leases must comply with some mandatory rules (e.g. clauses relating to the landlord's termination).

In case of material breach of contract the injured party may terminate without notice and demand compensation for losses suffered.

A purchaser of a property with leaseholds should ensure a right to hold the seller responsible, in case the tenant at a later stage puts forward claims stemming from the seller's ownership period.

→ Duration : term of the lease

- In Denmark, business premises are generally leased on a minimum term during which the lease is non-terminable unless the contract is breached. The period of non-termination varies a lot depending on the type of leasehold and the investment made by the landlord to prepare the leasehold for the tenant, but is typically twice as long for the landlord as for the tenant.
- Unless otherwise provided, the tenant may terminate the lease with a 3 months' notice, and unless otherwise provided there is no automatic termination of a commercial lease: it may only be terminated by notice of termination in accordance with the mandatory rules in the Business Lease Act or with the agreement.

→ Transfer of business

- Under the Business Lease Act the tenant may assign the lease agreement to a third party within the same line of business, unless the landlord has weighty reasons to object to such assignment, e.g. due to the third party's lack of experience or its financial situation. Subleases are not permitted. The sections of the act about assignments and subleases are mostly derogated by agreement.

→ Energy Label

- Since 1 July 2009: in case of any new commercial lease agreement, the landlord must provide an Energy Label and an Energy Plan to the tenant. These documents contain information on the property's current energy status, energy consumption (e.g. water and heat), and sets out objectives for improving the building's environmental performance.

→ Evolution of the rent during the lease

- Most often an indexation clause has been agreed between the parties, so the rent increases every year according to the net price index, but with a minimum increase of, say, 2 or 3 %. Sometimes, a maximum increase is also agreed. Apart from that the landlord is practically always allowed to increase the rent proportionally with increases in taxes or utilities, or other costs paid by the landlord with relation to the leasehold.

- Under the Business Lease Act either party may require that the rent be adjusted to the market rent by observing a special procedure. Such adjustments may take place 4 years after commencement of the lease agreement or 4 years after the latest previous adjustment to the market rent.

→ Change of Control of the lessee

- The Business Lease Act does not govern change of control or restructuring situations, so these are generally permissible unless otherwise agreed between the parties. However, most lease agreements drafted by legal advisers contain change of control clauses requiring the landlord's permission prior to such event (or at least enabling the landlord to object to the change of control under defined circumstances).

TAX

→ Direct acquisition of a property

- The Registration of acquisition of a property gives rise to a registration fee and in some cases value added tax (VAT).
- The registration fee amounts to DKK 1,660 plus 0.6 % of the purchase price or the latest public valuation (whichever is higher). The registration fee is the same for registration of conditional and absolute title deeds but is only to be paid once.
- Generally, no VAT is due on the acquisition of a property. However, transfer of a building site or a newly constructed building will be subject to VAT. The standard Danish VAT rate is 25 % assessed, in principle, on the purchase price.

Direct owning of a property

- Owners of a property in Denmark are generally obliged to pay property taxes, which are determined in each municipality and vary from 1.6 to 3.4%. The property tax rate in the municipality of Copenhagen is 3.4%.
- For investment properties it is possible, and typical, to pass on the actual obligation to the tenant in the property lease agreement whereby a regulation of the rent payment will take place if the property tax rate is changed.

→ Acquisition of shares in a company holding a property

- In practice the options open to a foreign investor are to establish a Danish limited liability company (an "A/S" or an "ApS"), a limited partnership (a "K/S") or a partnership limited by shares (a "P/S") or to purchase a company holding a property.
- The minimum capital requirement is DKK 500,000 for a public limited liability company and DKK 50,000 for a private limited liability company, which may be denominated in Euro.
- The acquisition of the shares in a company holding a property does not give rise to a registration fee. No VAT is due on the sale of shares in a company owning real property.
- A public or private limited liability company will be subject to Danish income tax at a flat rate of 24,5 % (2014) of the net taxable income. Taxable income includes rental income and financial income attributed to the real estate. Other tax rules apply for the limited partnership ("K/S") and a partnership limited by shares ("P/S").

- A sale of shares will not trigger a Danish tax payment for foreign investors. Thus, there will not be any Danish withholding tax levied on capital gains on the shares of the public or private limited liability company for foreign investors.

→ Generally

- As a main rule, interest related to commercial activity in a company is tax deductible. This implies that interest on loans as a starting point should be fully deductible for the company for corporate income tax purposes. However, there are certain limitations in the ability to deduct interest, inter alia by "thin capitalization" rules.

→ Asset deal vs. share deal

- Acquisition of the shares in a company holding a property may generate tax savings in terms of registration fee and the ability to deduct interest and maintain capital in the company for investment purposes at a lower taxation. However, it may also have other indirect tax consequences (e.g. no right to depreciate shares).

ESTONIA



Estonia, along with the other Baltic States, is one of the smallest investment markets in Europe by size, and thus sees relatively low levels of investment. But like other emerging markets, we are seeing relatively strong levels of growth, with the value of investment grade stock doubling since 2005.

The focus of investment is centred on the capital, Tallinn, particularly for core office and industrial assets. The retail landscape is more diversified across the country, covering a number of secondary cities, which have proved resilient to the economic downturn.

Investors are attracted to the strong cash flows and relatively high yields on offer and expectation of further compression. Asset transfer deals and share transfer deals are both common practice.

Activity in the market is limited to private companies, funds and institutions. Much of the activity is driven by domestic investors, with some growing interest from Russia. Although there has been activity from Nordic investors, but their share is falling.

Debt funding is relatively easy to obtain for assets offering strong income. Interest rates are favourable, but selectivity is key. Currency risk was eliminated back in 2011, when Estonia joined the Eurozone.

Market sizing

	Estonia	Europe
Invested stock* (Total stock)	EUR 5bn (EUR 10bn)	EUR 3,380bn (EUR 8,150bn)
Liquidity ratio* (10y average)	1.0% n/a	4.0% (4.5%)
2013 volumes (10y average)	EUR 0.1bn n/a	EUR 139bn (EUR 135bn)

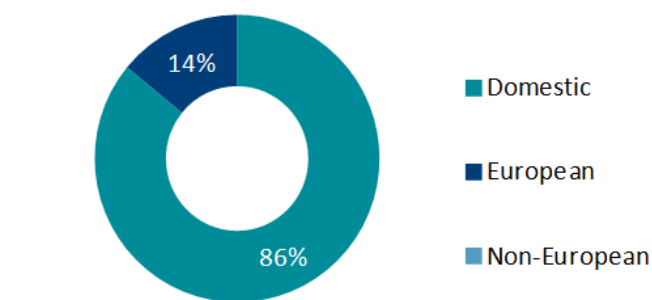
* 2012 figures

Market pricing - Tallinn (Q4 2013)

	Office	Retail	Industrial
Current Yield	7.75%	7.50%	9.00%
Min/Max (10y)	6.00-10.00%	6.00-10.00%	7.00-16.00%
Yield definition	Net initial yield		

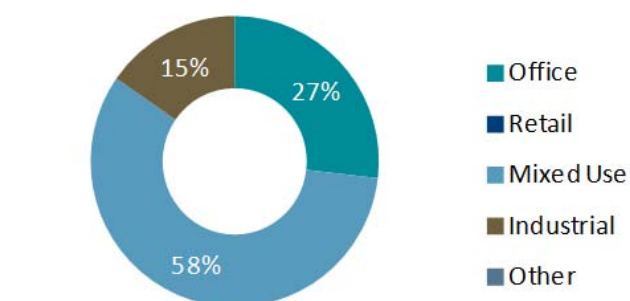
Source : DTZ Research

Investment activity by source of capital, 2013



Source : DTZ Research

Investment activity by asset type, 2013



Source : DTZ Research

PROPERTY LAW

TYPES OF OWNERSHIP

→ Freehold

Ownership

- The Estonian Law of Property Act defines ownership as full legal control by a person over a thing. An owner has the right to possess, use and dispose of a thing, and to demand the prevention of violation of these rights and elimination of the consequences of violation from all other persons.
- Immovable is a part of land including things permanently attached to it, such as buildings and standing forest. The provisions applicable to immovable are also applied to an apartment ownership. Ownership of an immovable and real right must be registered in the Land Register.

Co-ownership

- Any property may exist in the form of shared property in the ownership of several persons. The Law of Property Act defines shared ownership as common ownership (kaasomand) or joint ownership (ühisomand) :
 - Common ownership is ownership in legal shares of a shared thing belonging to two or more persons concurrently. As an example an apartment building may consist of apartment ownerships, whereas the common areas are in the common ownership of the apartment owners;
 - Joint ownership is ownership in undefined shares of a shared thing belonging to two or more persons concurrently

→ Leasehold

Lease (üür)

- Lease enables the lessee to use the leased premises for agreed payment. Compared to a real right, a lease contract concluded between the lessor and the lessee has a legal effect limited to the parties of the agreement. The lease contract does not have legal effect on third persons. Also, a lease contract does not enable the lessee to own or encumber a thing attached to an immovable (such as a building). A lease agreement must not be notarized or entered in the Land Register.

RIGHTS AFFECTING OWNERSHIP

The ownership of an immovable or real right may inter alia be affected by contractual rights and real rights. The contractual rights are most commonly be established by contracts for the use of immovable (lease contract, rental contract). The most common real rights include the right of superficies, servitude, mortgage and the pre-emption right.

→ Right of superficies (hoonestusõigus)

- An immovable may be encumbered so that the person for whose benefit a right of superficies is constituted has a transferable and inheritable right for a specified term to own a construction permanently attached to the immovable. The building erected on the basis of right of superficies is (as an exception from the general rule) not a part of the encumbered

immovable and belongs to the owner of the right of superficies.

- A superficies has the right to transfer or bequeath a right of superficies or to encumber it with real security, servitude, a real encumbrance or a right of pre-emption.
- The agreement establishing a right of superficies may include the obligation of the superficiesary to erect a building specified by the agreement. The right of superficies is established for a specified term of up to 99 years. The right of superficies is registered in the Land Register. A long-term right of superficies is similar to ownership.

→ Servitudes (servituut)

- A real servitude encumbers a servient immovable for the benefit of a dominant immovable. On the basis of a real servitude, the owner of the dominant immovable is entitled to use the servient immovable or the owner of the servient immovable is required to refrain from certain action for the benefit of the dominant immovable. As an example, the owner of the dominant immovable has the right to use a road passing through the servient immovable on the conditions established by agreement.
- An individual real servitude (usufruct, personal right of use) establishes a real right for the benefit of a person. As an example, the utility works are erected and operated by the owner of the utility works on the basis of a personal right of use.
- The contract establishing servitude must be notarised and the real right must be entered in the Land Register.

→ Mortgage (hüpoteek)

- Mortgage is a security encumbering the asset, which entitles the beneficiary to satisfy the claim by selling the immovable. A beneficiary has a preferential right over other creditors not holding a mortgage or holding a mortgage established later (lower ranking mortgage) in the event of a forced sale of the relevant asset.
- Any immovable or real right may be mortgaged and there is no limit on the number of mortgages that may be created over the same property.
- The contract establishing mortgage must be notarised and the real right must be entered in the Land Register. The mortgage is ranked in the Land Register according to the time of creation of the mortgage and the earlier mortgages have priority over later mortgages.

→ Pre-emption right

- A pre-emption right may be established by contract or by law. A pre-emption right enables the entitled person to step in a transaction of immovable, replacing the purchaser under the conditions agreed by the original parties.
- The public authorities hold a statutory pre-emption right for purposes of general public interest (such as an immovable located in nature conservation areas or an immovable under heritage conservation).
- A co-owner of an immovable holds a statutory option to substitute an acquirer in a real estate transfer if the immovable is acquired by a third person.

ACQUISITION PROCESS: KEY STAGES

→ Negotiations

- The negotiation phase of larger transactions may include signing of a letter of intent by the parties. The letter of intent may include a non-disclosure clause in order to allow access to the property, information and documentation.

→ Due diligence

- The public electronic registers provide adequate information on the immovables and applicable limitations established by real right or by law. There is however some information that is not publicly available (such as contractual obligations not entered in the Land Register, certain limitations established by general or detailed plan, limitations established for the protection of nests of species of highest protection category etc.) that should be verified separately.
- The entries of the Land Register are public. The purchaser may verify the real rights encumbering the immovable and the real rights established for the purpose of enabling use of the immovable (such as road servitudes). The public registers provide adequate information on applicable limitations: nature protection areas, limitation zones established by law (such as building restriction areas on the shoreline of a water body, limited management zones around roads, major utility lines) and heritage conservation limitations. The larger municipalities hold public registers with data on valid territorial plans and procedures initiated planning procedures. The public Building Register provides information on issued building permits and detailed data on erected buildings.

→ Preliminary contracts

- The preliminary contracts must be concluded in the same legal form as the principal contract. The preliminary contracts concluded for transfer of an immovable or establishing real right must be notarised. Therefore the preliminary contracts are not common.
- The transaction may be concluded in two phases. The parties may conclude a notarised sales agreement of the immovable and postpone concluding of the real right contract. In such case the sales contract includes the conditions and time of signing the real right contract. By concluding the real right contract the ownership of immovable is transferred and entered in the Land Register.

→ Deed of sale

- According to the deed of sale to the ownership of a property is transferred from the seller to the buyer. The contract transferring ownership of an immovable or establishing a real right must be notarised. The transfer of ownership of an immovable shall be registered at the Land Registry and the relevant documents are ordinarily passed to the registrar by the notary

LIMITATIONS TO ACQUISITION OF AN IMMOVABLE

- The right of a foreign entity to acquire agricultural or forest land are limited. A legal entity registered in the European Economic Area or an OECD member state may acquire an immovable consisting of more than 10 ha of forest or agricultural land, if the legal entity has been engaged in forest management or agriculture or has acquired a permission from the county governor. A legal entity registered in a third country may acquire an immovable consisting of more than 10 ha of forest or agricultural land, if the entity has obtained a permission from the county governor, the branch of the entity has been registered in Estonia and the entity has been engaged in forest management or agriculture for a year. A legal entity registered outside the European Economic Area may not acquire an immovable located in certain border areas specified by law, unless permitted by the Government of the Republic. The above limitations do not apply to acquiring shares of a legal entity who owns relevant immovables.

COMMERCIAL LEASES

Leases of buildings used for commercial purposes are covered by the Law of Obligations Act. The legal framework established by law may in majority be negotiated by the parties and agreed otherwise. The provisions of the commercial leases may be freely agreed by the parties, such as the amount of rent (which can be fixed or variable), the term of the contract (with or without a set term) and the accessory charges. The commercial leases commonly regulate the division of maintenance and repair obligations, improvements and the removal or compensation of improvements after termination of the contract.

→ Term and termination of the lease contract

- The lease contract may be concluded for a set term or without a set term. Unless agreed otherwise, a contract concluded without a set term may be terminated by both parties by a three-month notice.
- The contract may be terminated by both parties on the grounds of good reason established by law (such as termination by the lessee if the premises do not correspond to agreed conditions and the lessor does not fulfil relevant obligations). The parties may agree on more precise or different grounds for termination.
- A notice of unilateral termination of lease contract of business or residential premises must be submitted in writing. The notice submitted by the lessor must include provisions set forth by law.

→ Transfer of business

- If the lessor is substituted as a result of transfer of ownership or encumbering of the immovable, the new lessor of business premises may terminate the agreement if the new lessor urgently needs the premises for own use. The lease contract may not however be terminated on this ground if a notation of the lease agreement has been entered in the Land Register.

→ Energy-performance label (*energiamärgis*)

- New buildings and leased premises must hold an energy-performance label describing the projected or actual energy use of the premises.

→ Adjustment of rent

- Rent is usually adjusted annually in the amount agreed by the parties or on the basis of an agreed index. The changes in the consumer price index published by the national statistics authority Statistics Estonia is the most commonly used base index for commercial leases. The amount of rent is not regulated or capped by legislation

TAX

→ Direct acquisition of a property

- For stamp duty purposes, a real estate company (*sociétés à* The acquisition of a property gives rise to state fee, notary fee and value added tax (VAT). The state fee and notary fee may be applied separately to parts of the transaction carried out by notarised contract (such as transfer of ownership, establishment of a mortgage etc.).
- The amount of state fee is established by law based on the value of transaction. For example, transfer of ownership of an immovable for sales price of EUR 500,000 is subject to state fee of EUR 754.15.
- The amount of notary fee is established by law based on the value of transaction. For example, notarisation of an contract transferring the ownership of an immovable for sales price of EUR 500,000 is subject to notary fee of EUR 773.95 (VAT is added).
- The acquisition of a property from a seller liable to VAT is automatically subject to VAT in the amount of 20% in the case of (i) a building or a part thereof forms an essential part of the immovable and the immovable is sold prior to initial use of the building; (ii) a substantially improved building or a part thereof forms an essential part of the immovable and the immovable is sold prior to initial use of the building; (iii) an immovable that is located in an area with the obligation of detailed planning and is intended for erecting buildings; (iv) voluntary application of VAT, if the seller has notified the Tax and Customs Board about applying VAT to the value of immovable (excluding residential premises).

→ Acquisition of shares in a company holding a property

- Acquisition of shares in a company registered in the Estonian Central Register of Securities (private limited company or public limited company) does not entail state fees or notary fees. Acquisition of a share of a private limited company not registered in the Estonian Central Register of Securities must be done by a notarised agreement and a notary fee is applied. The amount of notary fee is established by law on the basis of share capital of the company or, if the purchase price is higher than the nominal value of the share capital, the value of transaction. For example, if the value of transaction is EUR 2,500, the applied notary fee is EUR 21 (VAT is added) and if the value of transaction is EUR 250,000, the applied notary fee is EUR 390.50 (VAT is added).

- The earnings from transferring shares by a non-resident legal entity are subject to corporate income tax, if (i) immovable compose more than 50% of the assets of the company and (ii) the entity holds at least 10% of the shares of the company. The earnings are subject to a flat rate income tax of 21% (20% as of 2014).

- Estonian resident companies do not pay income tax on retained or reinvested earnings and are subject to income tax only in respect of all distributed profits.

→ Asset deal vs. share deal

- Acquisition of the shares in a company holding a property may generate tax savings in terms state fees and notary fee.
- Also, a share deal may enable saving on income tax. It would be advisable to consider the structure of investing in an Estonian company holding a property through a third legal entity. The shares of Estonian company could be acquired by a legal entity registered in a country, which does not enable taxation of earnings from transferring shares of property holding company. For example, if the shares of Estonian company are acquired and later transferred by a company registered in Netherlands, the relevant earnings would not be subject to income tax regardless of the proportion of property in the assets of the Estonian entity.
- The share deal is preferential over asset deal, provided that the acquired company does not entail hidden liabilities (such as obligations related to transfer of an enterprise, past tax liabilities).

FINLAND



Finland's investment market is just over a third the size of its neighbour Sweden. Despite being smaller, it benefits from a well established domestic investor base as well as growing interest from overseas investors, especially from Germany, Sweden, and the USA.

New domestic funds have entered the market, including the first Finnish REIT. Due to the increasing amount of new domestic funds and foreign investors the liquidity of the Finnish property market has improved and sits above the European average. The positive trend concerning liquidity is expected to continue.

Measured by population growth, the Helsinki region is one of the fastest growing areas in the Europe, which enhances the attraction of the region. The Helsinki Metropolitan Area (HMA) is the most important property investment market, with more than 60% of the transactions in 2013 occurring in this area.

The legal and taxation system is transparent and the negotiation culture is straightforward. For example, the legislation regulating lease agreements is rather liberal, which gives parties the possibility to agree on terms and conditions quite freely.

Although there have been economic challenges in the Eurozone, Finland holds the 3rd position in The World Economic Forum's Global Competitiveness Index after Switzerland and Singapore.

Market sizing

	Finland	Europe
Invested stock* (Total stock)	EUR 45bn (EUR 80bn)	EUR 3,380bn (EUR 8,150bn)
Liquidity ratio* (10y average)	4.0% (3.5%)	4.0% (4.5%)
2013 volumes (10y average)	EUR 1.5bn (EUR 1.2bn)	EUR 139bn (EUR 135bn)

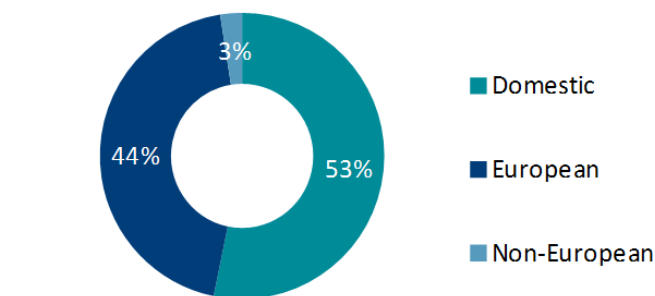
* 2012 figures

Market pricing - Helsinki (Q4 2013)

	Office	Retail	Industrial
Current Yield	5.25%	5.25%	7.25%
Min/Max (10y)	5.00-7.00%	4.80-6.80%	6.50-9.80%
Yield definition	Net initial yield		

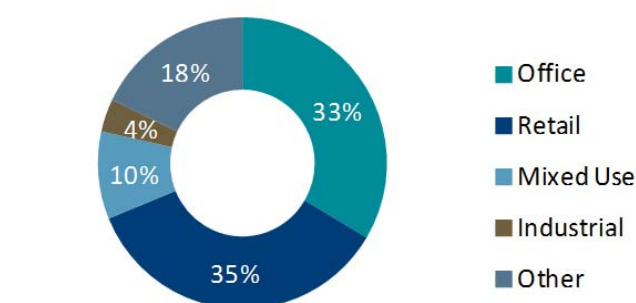
Source : DTZ Research

Investment activity by source of capital, 2013



Source : DTZ Research

Investment activity by asset type, 2013



Source : DTZ Research

PROPERTY LAW

TYPES OF OWNERSHIP

→ Freehold

Ownership

- Real estates in Finland are usually owned either directly or indirectly through a limited company.
- In general, real estate investors acquire real estate in Finland through a mutual real estate company (MREC) or through an ordinary real estate company (OREC). Both are limited companies with somewhat similar administrative procedures. They are both the legal owners of the underlying real estate.
- The difference between an MREC and an OREC is that an MREC's shareholders are entitled to possess certain premises in the real estate on the basis of their shareholdings in the MREC. The premises possessed by way of the ownership of the shares are set out in the MREC's articles of association. When the premises of an MREC are leased, the lease agreement is entered into between the tenant and the shareholder who owns the premises to be leased. Lease payments are made directly to the shareholder and not to the MREC. In an OREC, the lease agreement is entered into by the OREC and the tenant pays the rent to the OREC. An OREC can distribute profits to its shareholders through dividend distributions.
- The MREC/OREC is responsible for covering the real estate costs, that is, costs payable by the owner according to the lease agreement. With an OREC, the real estate costs are covered with the OREC's rental income. In case of an MREC, the costs are covered with maintenance fees paid by the shareholders. These fees are typically matched with real estate costs, aiming to produce a zero net result for the MREC.
- Title to real estate, a parcel of land or a specified share of real estate must be registered with the Title and Mortgage Register held by the National Land Survey of Finland.

Co-ownership

- The ownership of a real estate may be divided between co-owners into specified shares of a real estate, i.e. fractions, which are relative parts of a real estate. A specified share of a real estate does not have physical borders, and it cannot be allocated to a specific area of the real estate.
- Agreements on the division of possession of real estate are used to clarify the possession and the use of the real estate, which has been divided into specified shares, between the co-owners of the real estate. Agreements on the division of possession must be registered with the Finnish Land Register in order for them to be binding upon third parties.
- A partition procedure may be carried out on real estate to parcel out areas of the real estate into specific parcels of land with physical borders. A parcel may be sold or separated as its own real estate.

RIGHTS AFFECTING OWNERSHIP

→ Easement (*servitude*)

- An easement is a right of use imposed upon a real estate for the benefit of another real estate owned by a third party.
- The validity or content of an easement is not affected by a

change in the ownership of the encumbered or the benefiting real estate.

- Easements are as a rule permanent until amortised, but easements for a fixed period of time are also recognised in Finland.
- Easements are registered with the Finnish Land Register.

→ Mortgage

- Mortgage is a security encumbering a real estate that entitles the beneficiary to a payment in the order of seniority at the value of the mortgage through a forced sale of the real estate, at most.
- Mortgages can be registered to a real estate, a parcel of land or a specified share of a real estate.
- Mortgages can be created by the owner of the real estate, but also by the leaseholder to encumber the leasehold, including the buildings on the real estate.
- Mortgages are registered with the Finnish Title and Mortgage Register, upon which the registrar issues the mortgage notes. As mortgage notes are bearer instruments, the possession of a mortgage note is required in order to form a valid pledge. Legislative changes, which took effect on 1 November 2013, aim to increase electronic contracting (executing purchase agreements online through an internet-based service provided by the National Land Survey of Finland), but also make mortgage notes available in electronic form.

→ Pre-emption right

- Finnish law provides that the Finnish municipality where the real estate is located has the right of first refusal to purchase the real estate in case the area of the real estate exceeds a certain square meter area.
- In the Helsinki metropolitan area, which also covers the cities of Espoo and Vantaa, the municipality has a pre-emption right in case the area of the real estate exceeds 3,000 square metres. Elsewhere in Finland, the threshold is 5,000 square metres.
- In practice, the municipalities rarely use their pre-emption right. In transactions, it is commonplace to apply for a waiver from the relevant municipality prior to the acquisition, whereby the municipality will state that it will not exercise its pre-emption right.
- The pre-emption right is not triggered if the real estate is owned by a real estate company, in which case the shares of the company are acquired and not the real estate directly, since the ownership of the real estate in the former case does not change as opposed to the latter.

ACQUISITION PROCESS: KEY STAGES

Finland does not impose restrictions or reporting requirements on foreign individuals or entities wishing to carry out real estate transactions.

In the province of Åland, however, only those with a right of domicile are entitled to own or possess real estate. A permit from the provincial government is required of those without a right of domicile.

→ Purchase agreements

- The majority of real estate transactions involving professional investors are arranged by real estate brokers and carried out as auction processes. In such processes, purchase agreements and process-related documentation follow international standards.
- In real estate transactions involving domestic parties, more simple purchase agreements and process-related documentation are used.
- In a direct purchase of a real estate or a land lease, the purchase agreement must comply with the formalities of the Finnish Real Estate Code. With respect to real estate purchases, the purchase agreement, as well as the possible preliminary purchase agreement, must also be notarised.
- The purchaser is responsible for registering the title to the real estate with the Finnish Title and Mortgage Register.

COMMERCIAL LEASES

Leases of premises used for commercial purposes are governed by the Finnish Act on Renting of Business Premises.

The Finnish Act on Renting of Business Premises is mostly non-mandatory and, therefore, the terms of the lease agreement may, in most parts, be freely negotiated.

However, the Finnish Act on Renting of Business Premises includes certain provisions that are mandatory and may not be agreed upon to the detriment of the tenant.

The mandatory provisions of the Finnish Act on Renting of Business Premises also limit the usability of a pure triple net lease or a bondable lease in Finland.

→ Duration of the lease

- Commercial leases are, in general, entered into either for a fixed period or are in force until further notice.
- The term of a commercial lease may also be agreed to be a mix of both elements (i.e. fixed for a certain period of time after which the lease agreement will continue until further notice).
- Tenants are covered by certain mandatory provisions of the Finnish Act on Renting of Business Premises, which grant the right for the tenant to terminate the lease agreement with immediate effect, inter alia, if:
 - the use of the premises evidently endangers the health of the tenant,
 - the premises or a part of the premises are no longer in the possession of the tenant, or
 - the landlord has materially breached the lease agreement.
- It may be agreed that the tenant has a right to terminate also on other grounds. The landlord may terminate the lease agreement with immediate effect only as provided in the Finnish Act on Renting of Business Premises.

→ Rent

- Rent can be freely negotiated.
- The market practice is to agree on a fixed rent that is payable monthly. Rent is usually agreed to be increased (but often not decreased) in accordance with the Finnish cost-of-living index.

→ Transfer of lease agreements and subletting

- As a general rule, the tenant may not transfer its lease without the landlord's approval or unless the parties have agreed otherwise.
- The tenant may sublet less than half of the leased premises without the landlord's consent unless otherwise agreed. The tenant may not re-let more than half of the leased premises, unless the parties have agreed otherwise or the landlord has given its consent to it.
- The original tenant that has sublet or re-let the real estate will, however, remain responsible for the fulfilment of its obligations under the lease agreement.

TAX

→ Transfer tax

- Both direct purchases of real estate and purchases of real estate companies are subject to transfer tax. Transfer tax is payable by the purchaser, unless otherwise agreed.
- Direct acquisitions of real estate are subject to transfer tax in the amount of 4 % of the purchase price, i.e. including land and buildings. Direct acquisitions are also subject to a notary fee and a fee for the registration of the title. A leasehold is also regarded as a real estate for transfer tax purposes.
- Acquisitions of shares in an OREC, an MREC and a housing company, but also in a company whose assets directly or indirectly consist mainly of real estate in Finland, are subject to transfer tax in the amount of 2 % of the purchase price of the shares.
- In addition to the purchase price of the shares, with respect to ORECs and MRECs, the transfer tax base also includes shareholder loans on a pro rata basis. In addition, with respect to MRECs and housing companies the transfer tax base includes also debt share on a pro rata basis.

→ Real estate tax

- Real estate holdings (land and buildings) are subject to real estate tax, which generally varies between approximately 0.6 % and 1.35 % between municipalities. The tax base is the value of the real estate as determined by the Tax Administration.
- Municipalities may determine the real estate tax rate within the said range annually.



FRANCE



France is the second largest market in Europe after the UK, and is one of the top three markets in Europe for investment activity, with around EUR 16bn invested per year on average over the last ten years.

The investment market is focussed on the Greater Paris Region and accounts for three quarters of the total investment volume. But investors, finding the Greater Paris market too competitive and relatively expensive, are also active in the regional markets, with an average of EUR 3.5bn invested per year.

French investors dominate the market averaging over half of investment each year, though their share was higher in 2013. German and North American investors are also active, typically deploying over EUR1bn per annum, with UK investors slightly less.

The main players are the investments funds, followed by the quoted companies. France has an active REIT market, which was introduced at the end of 2003. Since 2009, the French investment market has been dominated by equity players, notably local SCPI's and OPCI's as well as German open-ended funds.

Thanks to the size of its office market (the biggest one in Europe) the French market is dominated by office acquisitions, with a long term average share of 69% of investments. Retail assets have seen their market share increase since 2009, representing 22% of commitments on average each year. Debt is relatively easy to secure from traditional banks, as well as a growing number of institutions and other debt funds.

Market sizing

	France	Europe
Invested stock* (Total stock)	EUR 535bn (EUR 900bn)	EUR 3,380bn (EUR 8,150bn)
Liquidity ratio* (10y average)	3.0% (4.0%)	4.0% (4.5%)
2013 volumes (10y average)	EUR 17bn (EUR 16bn)	EUR 139bn (EUR 135bn)

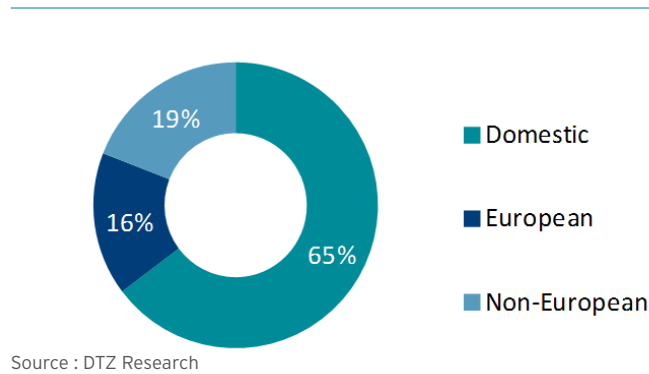
* 2012 figures

Market pricing - Paris (Q4 2013)

	Office (CBD)	Retail (City)	Industrial (Paris Region)
Current Yield	4.00%	4.00%	7.35%
Min/Max (10y)	3.75-6.00%	4.00-6.00%	5.90-8.50%
Yield definition	Net initial yield		

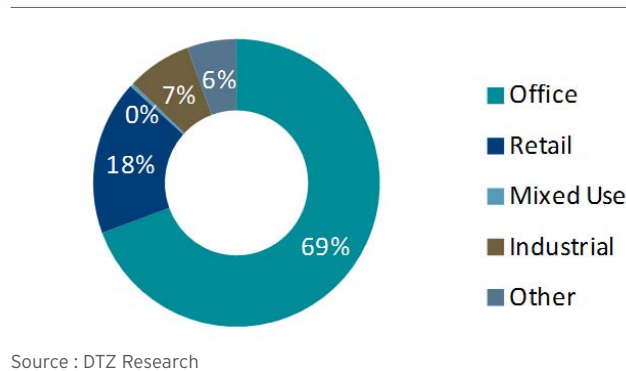
Source : DTZ Research

Investment activity by source of capital, 2013



Source : DTZ Research

Investment activity by asset type, 2013



Source : DTZ Research

PROPERTY LAW

TYPES OF OWNERSHIP

→ Freehold

Ownership

- French Civil Code defines ownership as the right to use, receive the benefits of, and dispose of a property in the most absolute manner, subject only to a non-prohibited use.
- Any title, transfer or charge on the ownership right must be registered on the local land registry (*fichier immobilier*)

Co-ownership

- Defined by Law
- Ownership by various persons of a property or a group of properties divided into co-ownership units (*lots de copropriété*).
- Consists in:
 - privately owned areas (*parties privatives*);
 - rights over (ie. share in) the common areas (*parties communes*).
- The division of the property is set-up and described in regulations (*état descriptif de division*) which identify each unit with a number, indicates its location and includes a complete description of the private and common areas.
- Each co-owner has a right to use the common areas and shares the related service charges.

Volume

- Created by notary's practice
- Division of the property into units of different shapes and sizes, stacked horizontally or vertically, each with its own straightforward right of ownership entitling its owner to build within the limits of the unit and with no share in or right of ownership on common parts.
- Often used for property complexes - such as La Défense - in which the same property is to be held separately by various owners (private as well as public entities) for different uses.
- Each owner automatically belongs to the owners' management entity (*association syndicale libre* - ASL or *association foncière urbaine libre* - AFUL) which main role is to own and manage common facilities.

→ Leasehold

Construction lease (*bail à construction*)

- Tenant is committed to construct on the land (this is an obligation, not an option); and keep the building in a proper state of repair throughout the term of the lease.
- Tenant enjoys a right in rem which may be mortgaged, as may the buildings constructed on the leased land
- Minimum term of 18 years and maximum term is 99 years (70 years for leases concluded before 3 January 1976).
- Tenant has to pay a rent.
- The lease must be drafted under a notarized form and registered in the land registry.

Long-term lease

(*bail emphytéotique or emphytéose*)

- Tenant is granted a right in rem, which can be mortgaged and transferred.
- Term is between 18 and 99 years inclusive and may not be extended by tacit renewal.
- Tenant has the right to construct a building, grant leases and active or passive easements for the maximum term of the lease.
- Tenant is responsible for operating the building and paying a consideration.
- To ensure that it is enforceable against third parties, the lease must be drafted under a notarized form and registered in the land registry.

RIGHTS AFFECTING OWNERSHIP

→ Easement (*servitude*)

- Is a burden imposed upon a property, for the use and utility of another property belonging to another owner.
- Is exercised to the detriment of the property assets which they encumber - servient land (*fonds servant*) - and to the benefit of adjoining assets which they enhance - dominant land (*fonds dominant*).
- As an attribute of the right of ownership, easements are transferred with the related tenement.
- While the owner of a dominant land may, at its expense, carry out any work required to use or to preserve the easement, it is not entitled to do anything to aggravate the situation of the servient land; the owner of the servient land must allow the easement to be exercised without doing anything to restrict it.

→ Mortgage (*hypothèque*)

- Is a security encumbering the asset, which entitles the beneficiary to a preferential right over other creditors in the event of a forced sale of the relevant asset.
- Confers a droit de suite entitling a secured creditor to take possession of the asset offered as security, even if it is in the possession of a third party.
- Any property in France may be mortgaged and there is no limit on the number of mortgages that may be created over the same property.

→ Lender's pledge (*privilège de prêteur de deniers / PPD*)

- Is a right derived from the lender's claim for preference over other creditors, even mortgagees.
- Applies only when the acquisition of the property is financed by a loan, provided that the loan agreement is executed by notarial deed and that the funds borrowed are used to pay the price of the property.

→ Pre-emption right

- Is the statutory option provided to certain public authorities to substitute an acquirer in a real estate transfer for purposes of general public interest.
- Is held by the public entities and prevails over any rights of pre-emption which may be held by private persons.

ACQUISITION PROCESS: KEY STAGES

Foreign investors wishing to carry out real estate transactions do not need any prior authorisation. Acquisitions may be carried out either through an asset deal or a share deal.

→ Negotiations

- As a preliminary step, a non-disclosure agreement is proposed by the seller/agents in order to allow access to the property, information and documentation
- The would-be purchaser issues a letter of intent which may be indicative or binding
- Discussions are usually pursued within the frame of a preliminary agreement providing for an exclusivity period during which the due diligence exercise is carried-out and at the expiry of which the would-be purchaser is expected to confirm its initial offer

→ Preliminary contracts

Preliminary contracts provides for the terms and conditions of the sale whereas the final transfer remains subject to the fulfilment of certain conditions.

Call option or unilateral undertaking to sell (*promesse unilatérale de vente*)

- Is a contract under which the seller or promisor (*promettant*) irrevocably undertakes to sell the property for a specified price, whereas the buyer or beneficiary (*bénéficiaire*), has the option of purchasing (or not purchasing) such property during the given time period.
- Consideration for this undertaking consists in a deposit which will be lost by the purchaser should it not opt for the acquisition

Bilateral undertaking to sell (*promesse synallagmatique de vente or compromis de vente*)

- Is the reciprocal undertaking to sell and to purchase where both parties are committed to transfer the property
- The transfer remains subject only to the fulfilment of condition precedents.

→ Deed of sale

- Is the deed according to which the ownership of a property is transferred from the seller to the buyer. For an asset deal, it is necessarily notarised and is the fulfilment agreement of the preliminary contract.
- There is no re-negotiation of the terms and conditions of the sale which have been agreed at the stage of the preliminary contracts
- The sale shall be registered at the Land Registry by the notary
- Warranties (i) for claims over the property aiming to evict the purchaser and (ii) for hidden defects, are the two mandatory warranties which by law are incumbent upon the seller of a real property

Off-plan sales (*ventes en état futur d'achèvement*)

- Used for selling buildings that have not yet been constructed
- The seller is committed to erect the property in accordance with agreed specifications, price and deadline; the seller provides the purchaser with completion and defects guarantees
- The purchaser pays the price gradually along the construction steps until completion
- At the date of the deed of sale, the transfer of ownership applies to the land and existing construction
- The seller remains liable for construction defects under the one-year, two-year and ten-year legal constructors' warranties

COMMERCIAL LEASES

Leases of buildings used for commercial purposes are covered by specific provisions codified in the French Commercial Commerce. Certain provisions of the commercial leases may be freely agreed by the parties, such as:

- The initial rent (which can be fixed or variable)
- The firm duration
- The service charges.

However, commercial leases must comply with some mandatory rules.

→ Duration : initial term of the lease

- May not be less than 9 years: the parties may agree on a longer term (a lease longer than 12 years is subject to a registration fee of 0.715%)
- Perpetual leases are prohibited.
- Unless otherwise provided, the lessee may, however, terminate the lease on expiry of each three-year period.
- There is no automatic termination of a commercial lease: it may only be terminated by notice of termination delivered by the landlord or a request for renewal by the tenant. Failing that, the lease will be extended beyond its contractual term for an unspecified term: each of the parties having the right to request the termination at any time with a 6-month prior notice.

→ Transfer of business

- Principle of freedom of assignment of the lease by the tenant within the context of the right to transfer its business
- Validity of restrictive clauses :
 - transfer of the lease without the business may be prohibited.
 - clauses limiting the transfer to various conditions such as prior information of the transfer by the landlord, prior payment of any unpaid balance, drafting of the transfer agreement as a notarised deed to which the landlord is a signatory, etc., are deemed valid.
 - in the case of assignment of the lease, it may be provided that the tenant remains jointly and severally liable with the assignee for the tenant's obligations under the lease, in particular, the payment of rent and charges.

→ The environmental appendix

- Since 14 July 2013: any new lease or renewal relating to office or commercial premises of a surface area greater than 2,000 sqm has to provide a «green appendix».
- It contains information on current consumption, a description of

facilities such as heating, lighting or waste management, and set out objectives for improving the building's environmental performance.

- No penalties in the case of absence of such document.

→ Evolution of the rent during the initial lease

- Rent is usually yearly adjusted in accordance with an indexation clause providing for an evolution of the rent on the basis of an index:
- The National Construction Cost Index published by the Institut national de la statistique et des études économiques (INSEE) is the most commonly used index for commercial leases
- It is now possible to apply a new index, called the Commercial Rent Index (*Indice des Loyers Commerciaux*), to premises which are used for commercial use (as opposed to office use).
- Another new index named ILAT (*Indice des Loyers des Activités Tertiaires*) has been created for premises used for non-commercial and non-industrial service activities.

→ Term of the renewed lease

- When the term of the initial lease is more than nine years, it is renewed subject to the same terms and conditions as the previous lease but for a term of only nine years.

→ Rent on renewal

- Rent on renewal must correspond to the rental value of the leased premises: when the parties cannot agree on this value, the law refers to certain elements:
 - the characteristics of the premises;
 - the permitted use;
 - the respective obligations of the parties;
 - local commercial factors which have an impact on the business operated by the tenant; and
 - the prices commonly applied in the vicinity.
- Exception to this principle: the rule of capping renewed lease rent:
 - not applicable for leases exceeding a nine-year term.
 - provides that the rate of variation applied to the rent payable upon entry into force of a renewed lease cannot exceed the variation in the quarterly National Construction Cost Index published by the INSEE since the date on which the initial rent of the expired lease was determined.
 - does not apply when: (i) as a result of tacit extension (ie, when the lease continues to have effect after its contractual term because no party has given notice), the term of the lease exceeds twelve years, (ii) single-use premises (premises which, according to their characteristics, can only have one use, such as a cinema or a hotel); and (iii) premises used exclusively as offices.
- In addition, the parties may derogate by contract from the capping rule and freely fix the procedure for determining the amount of the renewed lease.

TAX

→ Direct acquisition of a property

- The acquisition of a property gives rise to either stamp duty (*droits d'enregistrement*) or value added tax (VAT).

- Stamp duty applies to a construction completed for more than 5 years at the time of the acquisition. Stamp duty is assessed on the purchase price and is, in principle, levied at the rate of 5.09%, subject to exceptions where a reduced rate of 0.715% (eg. undertaking to re-sell the property within a 5-year period) or a fixed duty of €125 (ie. undertaking to build a property within a 4-year period) apply.
- On the contrary, the acquisition of a property from a seller liable to VAT is automatically subject to VAT in the case of (i) a *terrain à bâtir* (ie. land upon which constructions fixed to or in the ground may be authorised under local or municipal planning rules or the provisions) or (ii) a building completed within the last 5 years. VAT is levied at the standard rate of 20% and assessed, in principle, on the purchase price.
- In addition, notary's fees amount to around 0.825% of the purchase price above €60,000 (1% incl. VAT), it being said that, fees exceeding € 80,000 (excl. VAT) may be negotiated. The land registrar's salary (*contribution de sécurité immobilière*), levied at the rate of 0.10% on the same basis as stamp duty, is also due.

→ Acquisition of shares in a company holding a property

- For stamp duty purposes, a real estate company (*sociétés à prépondérance immobilière / SPI*) is defined as a non-listed legal entity (French or foreign) of which the assets mainly consist, at the time of the acquisition (or during the year preceding the sale of the shares), of property or property rights located in France or shares in other SPIs.

SPIs

- rate: 5%
- taxable basis: market value of the property, directly or indirectly held, and other assets, after deduction of the sole liabilities relating to the acquisition of the property.

Companies other than SPIs

- joint stock companies (*sociétés anonymes, sociétés par actions simplifiées*): rate of 0.1% assessed on the purchase price; or
- partnerships (*sociétés civiles, sociétés en nom collectif, sociétés à responsabilité limitée*): rate of 3% (with a deduction of €23,000 multiplied by the number of shares transferred, then divided by the total number of shares of the company) assessed on the purchase price.

Regardless of the nature of the company, a merger only gives rise to a fixed duty of €375 or €500 (plus notary fees and land registrar salary) where it involves companies subject to corporation tax.

→ Asset deal vs. share deal

Acquisition of the shares in an SPI may generate tax savings in terms of stamp duty but, it may also have other indirect tax consequences (eg. inheritance of potential tax liabilities, no right to depreciate shares).



GERMANY



Market sizing

	Germany	Europe
Invested stock* (Total stock)	EUR 490bn (EUR 1 300bn)	EUR 3,380bn (EUR 8,150bn)
Liquidity ratio* (10y average)	6.0% (6.0%)	4.0% (4.5%)
2013 volumes (10y average)	EUR 30bn (EUR 25bn)	EUR 139bn (EUR 135bn)

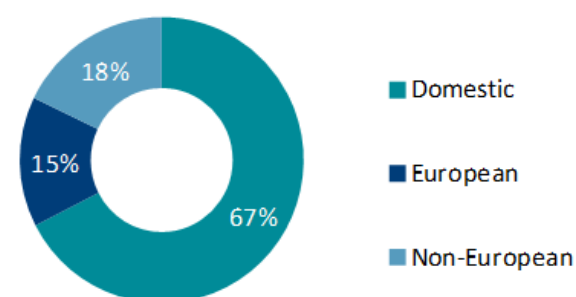
* 2012 figures

Market pricing - Frankfurt/Munich (Q4 2013)

	Office (Frankfurt)	Retail (Munich)	Industrial (Munich)
Current Yield	5.00%	4.15%	6.90%
Min/Max (10y)	4.55-5.70%	3.70-5.05%	6.65-8.05%
Yield definition	Gross initial yield (Gross Rental Income/Net Market Value)		

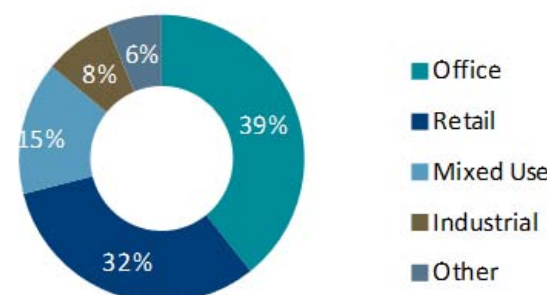
Source : DTZ Research

Investment activity by source of capital, 2013



Source : DTZ Research

Investment activity by asset type, 2013



Source : DTZ Research

In terms of annual investment volumes Germany is the largest commercial real estate market in Continental Europe, and the third largest European market by invested stock.

Germany has a well established investor base of its own with many institutional investors, of which the majority are private property vehicles, notably the various German closed ended funds and German open ended funds. Listed real estate companies and REITs, which came into effect in 2007, still play a relatively minor role.

Germany attracts investors from across the Globe because of its size and stable economic performance. Unlike the UK and France, where investment is dominated by their respective capital cities, investment activity in Germany tends to be more broad-based and focussed towards the three main cities of Berlin, Frankfurt and Munich, alongside Dusseldorf and Hamburg.

Investing in the German real estate market often takes place in the way of share deals, which avoids having to pay real estate transfer tax, or by way of a joint-venture with a domestic market player. Establishing new funds is subject to regulatory requirements.

Debt funding is provided by both domestic and overseas banks that are active in the German market. There are a number of mortgage banks that are specialised in real estate. Activity from institutional lenders (predominantly insurers) and private and institutional funds started only a few years ago, is expected to increase over the coming years.

PROPERTY LAW

TYPES OF OWNERSHIP

→ Sole ownership (Freehold)

- Sole ownership (*Alleineigentum*) is the most common form of freehold title in land. Subject to general restrictions imposed by law or rights of third parties such as tenants, neighbours etc. the sole owner has full control of the land and any buildings on it. This includes in particular the right to use the land and its buildings in the most absolute manner, the right to receive the benefits of it, as well as the right to encumber and the right to dispose.

→ Co-ownership and joint ownership

- A freehold title in an undivided part of land can be held by more than one person as co-owners (*Miteigentümer*). Each co-owner is entitled to separately dispose of its share of land.
- Several persons can also hold an undivided part of land in joint ownership (*Gesamthandseigentum*), e.g. in the event that they are organized as a civil law partnership or as an association without legal capacity. Each of the joint owners is entitled to a share of the jointly held property; however, the joint owners can only dispose of the property jointly.

→ Condominium ownership and part-ownership

- Under the German Condominium Act (*Wohnungseigentumsge-
setz, WEG*), separate absolute ownership of a self-contained unit in a building may be acquired, either in the form of condominium ownership (*Wohnungseigentum*) where residential premises are concerned, or as part-ownership (*Teileigentum*) where premises are not used for residential purposes. Such ownership consists of individual absolute ownership with regard to the self-contained unit and proportional ownership with regard to those parts and installations of the building that are not subject to individual ownership, such as the foundations, external walls, staircases, etc.

→ Hereditary Building Rights (Leasehold)

- In accordance with the German Hereditary Building Rights Act (*Erbbaurechtsgesetz, Erbbaurechtsgesetz*), land may be encumbered in such a way that the beneficiary acquires the alienable and inheritable right to own a building on or below the surface of the land. This form of legal estate in land is called a hereditary building right (*Erbbaurecht*) and subject to the statutory provisions governing absolute ownership.
- Hereditary building rights can be granted by the owner of the land. Such hereditary building rights are usually granted for long terms between 30 and 99 years. Usually the beneficiary of the hereditary building right has to pay a ground rent (*Erbbauszins*) to the owner of the land. The owner of the land becomes the owner of the building(s) and is obliged to pay compensation to the beneficiary of the hereditary building right upon termination of the hereditary building right.

→ Cadastral map and land register

Easements and other encumbrances

- Under German law a real estate property may be affected by

the following encumbrances which need to be registered in section II of the land register of the encumbered property :

- Hereditary building rights (*Erbbaurechte*) encumbering the land;
- Ground easements (*Grunddienstbarkeiten*) by virtue of which the owner of one plot of land may use another plot of land or demand that certain activities or rights are not exercised on the other plot of land;
- Usufructs (*Nießbrauchrechte*), enabling the beneficiary to derive profit or benefit from a property;
- Limited personal easements (*beschränkte persönliche Dienstbarkeiten*) entitling a certain person to use the encumbered property for certain purposes;
- Rights of pre-emption (*Vorkaufsrechte*);
- Conveying rights to recurrent payments or services (*Reallasten*), granting a right to recurring payments or services to the beneficiary.

Property charges

- Real estate property may be encumbered by mortgages (*Hypotheken*) and land charges (*Grundschulden*) which have to be registered in section III of the encumbered property's land register. A mortgage encumbers land by allowing the mortgagee recourse against the land as a security for an existing or future debt based upon an underlying personal claim of the mortgagee. A land charge encumbers the land by allowing the land charge holder recourse against the land in principle independently of any underlying personal claim. As a land charge is independent from the underlying claim (but only connected to a specific claim by contract – the so-called security purpose agreement (*Sicherungszweckvereinbarung*)), land charges are the preferred collateral in real property financing. Both mortgages and land charges may be granted in either certificated or non-certificated form.

Public building encumbrances

- Public building encumbrances are provided in favour of public authorities. Public building encumbrances are generally not registered in the land register itself but in a special public building encumbrances register (*Baulastenverzeichnis*) which is maintained by the local building authority. Since public building encumbrances registers do not exist in the federal states of Bavaria and Brandenburg, public building encumbrances are registered in the land registers in these two federal states.
- Public building encumbrances serve the purpose that particular demands of public building law, namely such beyond the existing public building law, are met. In many cases the issuance of a building permit is made conditional to the creation of a public building encumbrance by the applicant.

ACQUISITION PROCESS: KEY STAGES

→ Types of transactions: Asset Deal and Share Deal

- Real Property can be acquired by direct purchase of title to the asset itself (asset deal) or by purchase of shares in the entity which holds title to property (share deal). Asset deals are often perceived as being less complex than share deals

and may cause lower transaction and advisory costs. However, share deals are often advantageous for tax and other reasons. If appropriately structured, taxation of capital gains from the sale as well as real estate transfer tax can be avoided and the consequential benefits can be and often are shared by the seller and the buyer.

→ Notarisation requirements

- Under German law, agreements concerning land or interests in land, including offers and options, are only effective if they have been executed by notarial deed. The entire agreement including all ancillary agreements must be entered in the notarial record. Hence, in case of an asset deal the sale and purchase agreement regarding the real estate property always requires notarisation.
- In case of acquisition of shares in a property holding company, no real property is sold as such. Hence, in general the notarisation requirement does not apply. However, if in the context of the acquisition of shares, obligations to buy or sell real property are established, this may lead to a notarisation requirement also for the share sale and purchase agreement. Further, a notarisation of the share sale and purchase agreement is required if a share deal includes a sale of shares in a German limited liability company (*Gesellschaft mit beschränkter Haftung - GmbH*).

→ Acquisition process

- Usually the acquisition process commences with the signature of a preliminary agreement (heads of terms, letter of intent or memorandum of understanding) fixing the key parameters of the transaction and granting the buyer exclusivity for a certain period of time. In general such preliminary agreements are - with the exception of provisions regarding confidentiality and exclusivity - non binding. They are usually executed in simple written form.
- On a confidential basis the seller will provide the buyer with information and documentation regarding the object of the purchase in order to enable the buyer to carry out a due diligence exercise. Documentation is generally made available in an electronic data room.
- Based on the preliminary agreement and the results of the due diligence the parties will negotiate the sale and purchase agreement. Once the parties have come to an agreement the sale and purchase agreement will be notarized (in the event of an asset deal or sale of shares in a GmbH) or signed in written form as required by law.
- In the event of an asset deal the notary will apply for the registration of a priority notice of conveyance in the land register right after the notarisation. By entering a priority notice of conveyance the buyer's right to be registered as legal owner is protected vis-à-vis any third party buyer.
- In the event of an asset deal the sale and purchase agreement will provide for certain conditions precedent to the payment of the purchase price such as the registration of the priority notice of conveyance, the waiver of the statutory pre-emptive right of the local municipality and the deletion of encumbrances that are not taken over by the buyer (esp. existing financing land charges).

- The payment of the purchase price usually occurs once the conditions precedent agreed in the sale and purchase agreement have been satisfied. Unless otherwise agreed, the possession, including all rights and obligations is transferred to the buyer upon payment of the full purchase price («completion»). After the payment of the full purchase price the notary will apply for the registration of the buyer in the land register (asset deal), or in the commercial register (share deal).

COMMERCIAL LEASES

- Under German law, leases are not estates in land but contracts. This is important, since these contractual leases cannot be agreed in a fully binding way for a period of longer than thirty years (short-term leases). Hereditary building rights and registered leases (*Dauernutzungsrechte*) are the only property interests in Germany which are similar to leaseholds (leases in rem).
- The German Civil Code (*Bürgerliches Gesetzbuch - BGB*) contains a number of provisions concerning both residential tenancies and commercial leases. The following comments refer to commercial leases only.

→ General remarks on commercial leases

- Commercial leases are subject to statutory provisions to the extent to which they are not governed by an agreement individually negotiated between the parties. However, detailed written contracts are generally used for commercial leases. Leases which contain the general terms and conditions of one party (*Allgemeine Geschäftsbedingungen*) will also be reviewed under the statutory provisions regarding the general terms and conditions. Any violation of these statutory provisions usually renders the respective provision of the lease agreement void because these statutory provisions, broadly speaking, aim to protect the tenant. Thus, the aforementioned provisions should be duly considered whenever contracts contain provisions not individually negotiated by the parties.

→ Requirements of written form

- A lease agreement for a period of more than one year must comply with the statutory written form. The contractual document of such lease agreement shall include all the agreements between the parties, including any amendment agreements and annexes such as any building descriptions, plans, lists of ancillary charges, etc. If the parties fail to comply with the written form, the lease agreement providing for a longer fixed lease term is presumed to run for an indefinite period and may be terminated with only a short regular statutory notice period of six to nine months. There is an ample range of case law of the German Federal Court (*Bundesgerichtshof*) construing the requirements of the written form rather extensively.

→ Scope of use

- It is important to establish the legality of the intended use of the property before concluding the contract as buildings may only be used pursuant to the terms of the respective building permit. If the landlord leases out premises for a specific purpose, he is subsequently responsible to ensure that all necessary requirements relating to the building are fulfilled, including the duty to obtain any necessary permits. The landlord can transfer some of these responsibilities to the tenant. The tenant also customarily assumes responsibility for any subsequent changes in use and for fulfilling any requirements

which may derive from such changes. The landlord cannot exempt himself - at least not by standard-form contract - from liability, should the premises prove unsuitable for the use agreed upon in the lease agreement.

→ Operational costs

- According to German lease law, the rent is a gross rent if not otherwise agreed in the contract, i.e. the rent is deemed to include all operational costs.
- However, the landlord can transfer such operational costs to the tenant if this is specified in the lease agreement in detail. Operational costs can be transferred to the tenant in the way that the tenant is obliged to conclude the corresponding contracts directly with the suppliers. Alternatively the parties might agree that the landlord concludes the contract with the respective suppliers and allocates the operational costs to the tenant. In this case the specified operational costs that shall be borne by the tenant have to be listed explicitly in the lease agreement. Alternatively a reference to the German Regulation on Operating Costs (*Betriebskostenverordnung or BetrKV*) may be included into the contract.
- The costs for heating and consumption of warm water can be partly transferred to the tenants according to the German Regulation on Heating Costs (*Heizkostenverordnung*).

→ Repairs

- According to German statutory law, the landlord is obliged to bear all expenses incurred by keeping the lease object in good condition. These include the costs for repairs, maintenance work and replacements. However, the parties may deviate from statutory law in certain situations. Thus, in commercial lease agreements it is usually agreed upon that the landlord is responsible for structural repairs whereas the tenant is responsible for repairs within the lease object. For common areas used by several tenants (e.g. entrance hall, staircase, etc.), costs for maintenance, repairs and renewals allocated to the tenants must be limited (e.g. not more than 10 % of the annual net rent).

TAX

→ Real Estate Transfer Tax (RETT)

- In Germany the disposal of a real estate asset is subject to Real Estate Transfer Tax («RETT») which is levied by the competent tax authority. The level of taxation was stable all over Germany at 3.5% from 1997 to 2006. Since 2006 - except for the federal states of Bavaria and Saxony - most of the federal states have raised the level of taxation which is now either at 4.5%, 5.0%, 5.5%, 6 % (Berlin) or even 6.5% (Schleswig-Holstein). The tax base for asset deals is the purchase price plus other obligations to be fulfilled by the buyer.
- A share deal may also be subject to RETT in the event that (i) either at least 95% of the shareholdings in the property holding company are acquired by the same buyer or (ii) the total shareholding in the property holding company is transferred within the transaction. Taking these principles into account, a transaction maybe structured in a way to avoid RETT being triggered.

→ Value Added Tax (VAT)

- The sale of a real estate asset by way of an asset deal is not subject to VAT in the event of a transfer of a business as a going concern under German VAT law.
- In the event that the asset deal is not considered as a business going concern but as a delivery of a real estate asset the transaction is subject to VAT but tax exempt. In this event the seller might opt for the transaction not to be VAT exempt provided that the object of the transaction is a real estate property with VAT-able leases. The seller could then collect input VAT. In this case the reverse charge mechanism is applicable. The applicable VAT rate is currently 19%.
- In the event of a share deal the structure needs to be analysed in order to find out whether it is at all subject to German VAT, whether it is tax exempt and whether it can be treated as a non-VAT-able transfer of a business as a going concern.

HUNGARY



Despite being smaller in size compared to its neighbouring markets of the Czech Republic and Poland, Hungary benefits from a relatively high share of cross border investment, notably from Austria, Germany and the United-Kingdom. Given its size volumes are lower though. Activity is strongly focussed on the capital, Budapest, with limited activity elsewhere.

Hungary has an active domestic investor base, including private individuals, focussing on smaller office or retail assets with long leases to international tenants. There is an active listed sector, but this is comparatively small compared to private individuals and funds. Institutional investors represent a small portion of the market, but there are signs of growth.

Given its relative size, access to product can be challenging at the core end of the market. There is also high activity in the distressed sector where owner occupiers are able to find suitable vacant properties at favourable price levels.

Offices dominate the investment market, with industrial volumes also relatively strong. Retail volumes are comparatively small compared to other European markets.

Market sizing

	Hungary	Europe
Invested stock* (Total stock)	EUR 17bn (EUR 70bn)	EUR 3,380bn (EUR 8,150bn)
Liquidity ratio* (10y average)	2.5% (2.5%)	4.0% (4.5%)
2013 volumes (10y average)	EUR 0.4bn (EUR 0.6bn)	EUR 139bn (EUR 135bn)

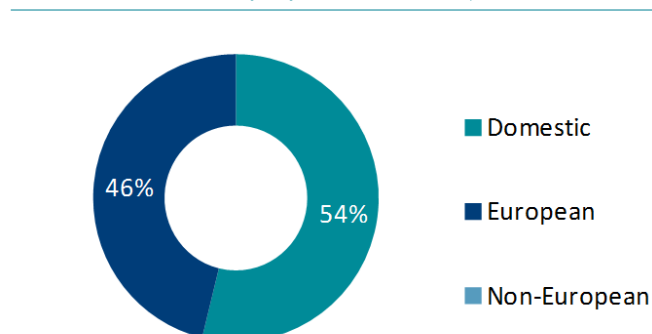
* 2012 figures

Market pricing - Budapest (Q4 2013)

	Office	Retail	Industrial
Current Yield	7.75%	7.50%	9.00%
Min/Max (10y)	5.75-8.30%	5.75-10.00%	6.50-9.80%
Yield definition	Net initial yield		

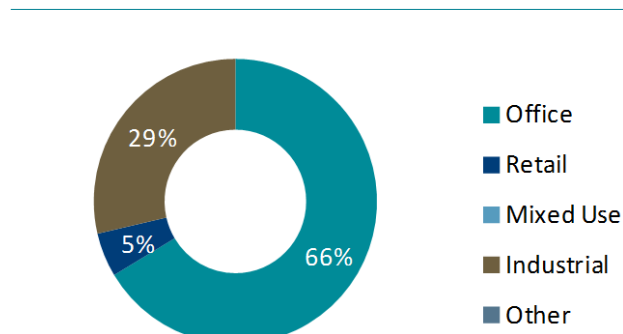
Source : DTZ Research

Investment activity by source of capital, 2013



Source : DTZ Research

Investment activity by asset type, 2013



Source : DTZ Research

PROPERTY LAW

TYPES OF OWNERSHIP

→ Ownership

Sole ownership (Freehold)

- The Civil Code defines ownership as the full and exclusive right over the property within the framework of law and without prejudice to any right of others. The owner has the right to possess, use, utilize, receive the benefits of, and dispose over the property.
- The transfer of ownership of real properties is implemented through the conclusion of a sale and purchase agreement, providing an effective legal title for the transfer of ownership, and further the registration of the change of the ownership title with the Land Registry (*ingatlan-nyilvántartás*)

Co-ownership

- Defined by the Hungarian Civil Code.
- Joint ownership by two or more persons of the same property, virtually divided to co-ownership portions (*tulajdoni hányad*).
- Each co-owner has the right to use and utilize the property; however, they may not use their rights to an extent it adversely affects the rights or rightful interests of other co-owners of the property.
- The co-owners may claim the proceeds of the property proportionate to their respective co-ownership portions; costs and expenses related to the property, obligations originating from the co-ownership and any damages to the property shall generally be borne in the same proportion by the co-owners.

RIGHTS AFFECTING OWNERSHIP

→ Easement (*szolgáalom*)

- Is a lawful or contractual burden imposed upon a property for a third party's (at least partial) use and utilization thereof.
- The possessor of the beneficiary property (*uralkodó telek*) may use the servient property (*szolgáló telek*) under the easement to a determined extent, or may demand from the possessor of the servient property to refrain from certain conduct.
- Easements on real properties may be established generally for the purpose of passage, supply and drainage of water, building a cellar, installation of utility poles, buttressing a building or other similar purposes.
- Easements are transferred with the ownership, and cannot be transferred independently.

→ Mortgage (*jelzálog*)

- Is a security interest (collateral) encumbering the property which shall be registered with the Land Registry, created by the respective written agreement of the parties.
- Entitles the beneficiary to seek satisfaction from the mortgaged property prior to other claims, if the obligor of the secured obligation fails to perform.
- As a general rule, properties in Hungary may be mortgaged and there is no limitation as to the number of mortgages

that may be registered upon the same property in the Land Registry.

→ Statutory pre-emption right

- The most common statutory pre-emption rights are granted for: co-owners of the real-property, the owner of the building on the land, the owner of the land on the building, the Hungarian state or the local governments. The acquisition of arable land is also restricted by special pre-emption rights in favour of the Hungarian state, the neighbours etc.
- Statutory pre-emption rights prevail over the pre-emption rights established by the agreement of the parties.

ACQUISITION PROCESS: KEY STAGES

Foreign investors do not need any prior authorisation to carry out real estate investments in Hungary. However, acquisition of agricultural land and real estate acquisitions by non-EU citizens are restricted by the current legal provisions.

→ Checking public records

- In case of asset deals, purchasers usually check in advance the up-to-date (well developed and thus, reliable) Hungarian land registry records to make sure the seller's valid and existing ownership title.
- In case of a share deal, purchasers typically inspect the public records of the real estate holding company in the Company Registry as well.

→ Negotiations

- As a preliminary step, a non-disclosure agreement is usually proposed by the seller/agents in order to allow access to the property, information and documentation.
- The potential purchaser issues a letter of intent which may be indicative or binding (binding in case it is furnished with the instruments and requirements of an offer; the letter of intent shall be considered as non-binding if the parties agreed respectively).
- Discussions are usually pursued within the frame of a letter of intent signed by the transaction counterparties or of a preliminary agreement concluded between the same parties providing for an exclusivity period during which the due diligence exercise is carried-out and at the expiry of which the would-be purchaser is expected to confirm its initial offer.

→ Preliminary agreements

- Preliminary agreements provide for the main terms and conditions of the future sale whereas the conclusion of the final sale and purchase agreement remains subject to the fulfilment of certain conditions. If the conditions are met, the conclusion of the final agreement may be enforced by judicial means.

Call option (*vételi jog*)

- The holder of the call option has the right to acquire the property from the seller with a unilateral statement, at the agreed upon purchase price.

- The call option right is effective vis-à-vis third parties if it is registered with the Land Registry.

Put option (*eladási jog*)

- Provides the owner the right, but not the obligation, to sell the underlying property at a specific purchase price by way of delivering a unilateral statement to the purchaser party.
- The put option is effective vis-à-vis third parties if it is registered with the Land Registry.

→ Sale and purchase agreement / Deed of Sale

- Is the written agreement based on which the ownership of a property transfers from the seller to the buyer; the agreement must be notarised or prepared and countersigned by a Hungarian attorney at law.
- It may either serve as the accurate fulfilment of and completion with detailed terms of the preliminary sale and purchase agreement or a different new agreement in case the parties deviate from the preliminary agreement with mutual consent (otherwise the terms and conditions of the preliminary sale and purchase agreement are binding and non-negotiable).
- The ownership title shall pass upon the registration of the new owner with the Land Registry.
- The seller usually warrants for the effective legal title without any non-revealed third party rights, further that the property is free of any hidden/non-revealed defects. The seller of a newly developed real estate shall be responsible for the contracted and regulated technical parameters and qualities of the real estate.

Off-plan sales

- Not covered by explicit Hungarian legislative provisions (i.e. not a regulated instrument).
- May be implemented through a preliminary sale and purchase agreement or a combination of a sale and purchase agreement and a construction agreement. In the latter case, construction fee is also payable.
- The seller is committed to develop and erect the property in accordance with agreed specifications, price and deadline; the seller provides the purchaser with completion and defects guarantees.
- The purchaser may pay the purchase price and/or the construction fee gradually along the construction steps until completion.
- The seller, acting also as developer, remains liable for construction defects under statutory guarantee periods.
-

COMMERCIAL LEASES

Lease agreements for residential and business premises are covered by specific provisions of the Civil Code and the Tenancy Act.

In general, the parties may deviate from the provisions of the Tenancy Act, but some regulations are mandatory. Lease agreements must be concluded in writing.

→ Term: definite term or indefinite term

- Lease agreements may be concluded for definite or indefinite term.
- Different rules are applicable for the termination of lease agreements concluded for definite term (as the usual case, ordinary termination is only possible in case of indefinite term lease agreements).
- Definite term lease agreements automatically terminate at the end of the definite lease term.

→ Change of control

- In case of an asset deal the purchaser replaces the seller by law and shall act as the new lessor of the property.
- In case of a share deal the acquisition generally does not affect the lease, as there is no change in the lessor's position.
- The transfer of the tenant's right of lease (the business of the tenant) requires the prior written consent of the lessor.
- The change of ownership of the tenant only requires the lessor's approval if it is expressly stipulated in the lease agreement.

→ Energy certificate

- With a few exceptions, obtaining an energy certificate by the seller is mandatory in case of the sale or lease out of a real estate; the sale and purchase agreement shall refer to the relevant energy certificate of the real estate.
- Energy certificates mainly focus on the actual qualification of the energy consumption of the building.
- Energy certificates may set out objectives for the improvement of the building's energy consumption.

→ Indexation of the rent

- Usually there is an indexation clause specified in the lease agreements that gives the opportunity to adjust the rent time on the basis of an index without modifying the original lease agreement. The most common indexes used as reference in the lease agreements are the following:
 - the consumer price index published by the Hungarian Central Statistical Office (KSH)
 - the Monetary Union Index of Consumer Prices (MUICP) issued by Eurostat

TAX

→ Direct acquisition of a property

- The acquisition of a property is subject to stamp duty.
- The rate of the stamp duty is generally 4% below the transactional value of HUF 1 billion, while the amount in excess is subject to 2% stamp duty. However, the maximum amount of stamp duty may not exceed HUF 200 million.
- Lower stamp duty rates may be applied in case of several special cases (e.g. the main business profile of the acquirer is trading real property; the acquirer qualifies as a credit institution; the acquirer entity qualifies as a regulated real estate investment company (REIT); the acquirer entity is engaged in financial leasing activities) as defined by the Act on Stamp Duty.

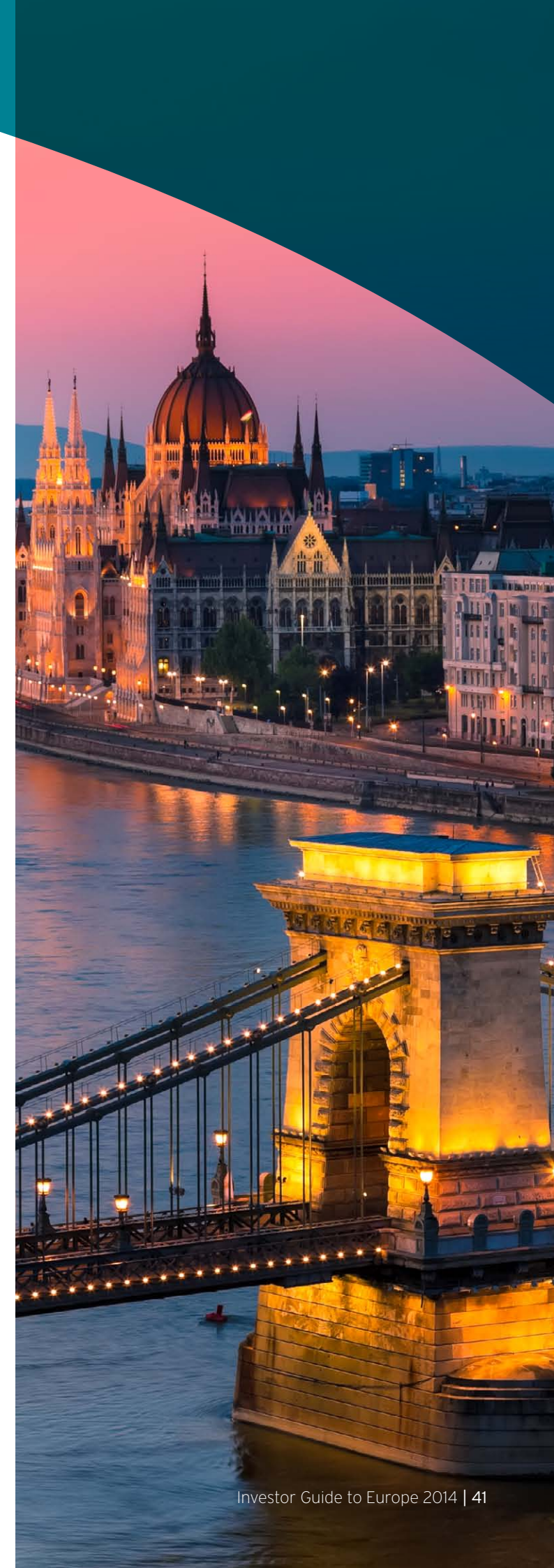
- As a general rule, real estate acquisitions are not subject to VAT. However, if the sale of the real property is made within two years of the issuance of the final occupancy permit or the sale is made before the first actual occupation of the property, the sale may be subject of VAT. The current VAT is 27% of the purchase price.

→ Asset deal vs. share deal

- Acquisition of the shares of a company owning a property may generate tax savings in terms of stamp duty for the acquirer, but it may also have other indirect tax consequences (e.g. potential future tax liabilities, no possibility of the depreciation).

→ Acquisition of shares in a company holding real estate in Hungary

- The acquisition of a legal entity which qualifies as a «company holding domestic real estate» (*belföldi ingatlanvagyonnal rendelkező társaság*) is also subject to stamp duty. A legal entity qualifies as a «company holding domestic real estate», if at least 75% of its booked assets consist of Hungarian real properties, or otherwise the entity owns (directly or indirectly) at least 75% of the shares of a company holding domestic real estate.



IRELAND



The Irish investment market is relatively small and has historically been dominated by domestic investors. The market has suffered in the wake of the global financial crisis.

Following the swift action to create a Bad Bank in the form of NAMA, the write down of loans and sharp re-pricing, the Irish market is now witnessing a strong recovery, underpinned by increased occupier demand, favourable policy measures and improving economic sentiment. This is also supported by growing interest from overseas investors, including the UK, USA and global opportunity funds.

The Irish market is dominated by Dublin, which represents the bulk of investment activity, focussed on office, retail and mixed-use schemes. The strength of transaction activity has been characterised by a number of large sales and portfolio sales, most notably, the Project Arc and Ulysses Portfolio. In addition, there has been a noticeable increase in office market investment activity.

The market has been dominated by private investors and companies along with institutional investment. The listed sector has been relatively small. However, legislation to create REITs came into effect in 2013, since when Green REIT and Hibernia REIT PLC have been launched to the market.

The supply of bank finance remains a concern, but has improved in 2013. Lending remains deal and borrower specific. The extension of the capital gains tax window for investors to December 2014 and low bank deposit rates should see further entrants to the market as investors look for alternative investments to inflation proof their capital.

Market sizing

	Ireland	Europe
Invested stock* (Total stock)	EUR 50bn (EUR 70bn)	EUR 3,380bn (EUR 8,150bn)
Liquidity ratio* (10y average)	2.6% (2.0%)	4.0% (4.5%)
2013 volumes (10y average)	EUR 1.3bn (EUR 1bn)	EUR 139bn (EUR 135bn)

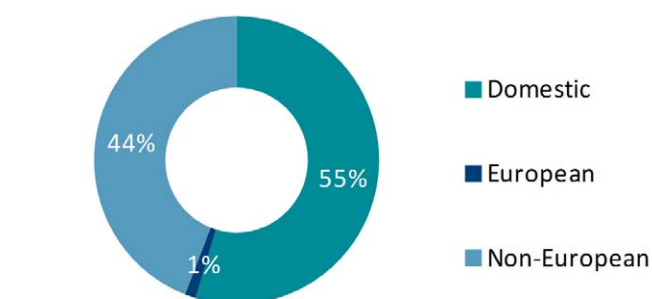
* 2012 figures

Market pricing - Dublin (Q4 2013)

	Office	Retail	Industrial
Current Yield	5.75%	6.00%	8.50%
Min/Max (10y)	4.00-7.50%	2.50-6.50%	5.50-9.25%
Yield definition	Net initial yield		

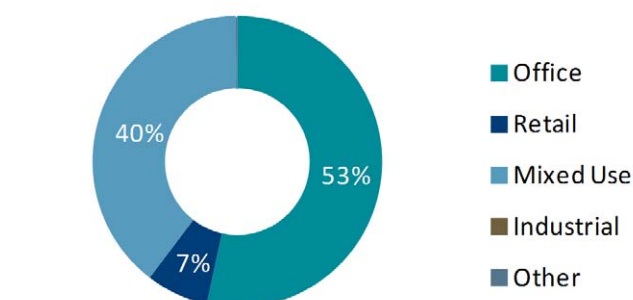
Source : DTZ Research

Investment activity by source of capital, 2013



Source : DTZ Research

Investment activity by asset type, 2013



Source : DTZ Research

PROPERTY LAW

TYPES OF OWNERSHIP

→ Ownership

Freehold absolute

- Non-time limited interest which represents absolute ownership of the land itself, the subsoil below it, the airspace above it and any buildings constructed on it.
- Transfer of a freehold interest operates as a statutory trigger event requiring registration at the Irish Land Registry.

Freehold Fee Farm Grant

- An alternative form of freehold ownership (a freehold with the characteristics of a leasehold) used to impose covenants on the owner and requiring payment of a nominal rent - occasionally contains forfeiture provisions. In 2009, new fee farm grants were abolished but many older still remain.
- Transfer of a freehold fee farm grant interest operates as a statutory trigger event requiring registration at the Irish Land Registry.

→ Leasehold

Long leasehold

- Used by freehold landowners to maintain the integrity of their estates whilst generating a capital return; for the tenants, long leases are valuable assets and «owning» a long lease is often considered akin to owning a «virtual freehold» in the relevant property.
- The term of a long lease can vary from 99 years to 999 years and a price («premium») paid for its grant.
- Usually a negligible rent payable (as a «premium» will have been paid) although in the commercial arena there may be an element of gearing requiring the long leasehold tenant to pay an agreed percentage of the annual income received from occupiers to the freeholder.
- Generally transferable to third parties by assignment or under-letting although in some instances the consent of the freeholder may be required.
- In the commercial sector alterations and change of use are often permitted without the consent of the freeholder.
- Whilst the freeholder will have a right to terminate («forfeit») the lease for tenant breach, in practice there are a number of statutory protections to relief from forfeiture to provide the tenant with protection.
- Capable of being used as security.
- Subject to mandatory registration at Land Registry.

Occupational leases (commercial)

- Used by freehold or long leasehold owners to generate an income stream.
- Historically leases tended to be for 25 to 35 years however the average lease term now is 10 years or 15 years with a break at ten years.
- Usually an open market rent is payable (quarterly in advance) In leases granted before 1 March 2010 there will be provision

for an upwards only rent review to the market rent every five years. Leases granted from 1 March 2010 have open market reviews every five years as upwards only reviews are now prohibited. Fixed rent and index-linked increases are also found but not yet very common.

- In addition to paying the rent the tenant will generally be responsible for covering the full costs of repair, reinstatement, maintenance and insurance of the property.
- The lease will restrict the tenant's right to assign, underlet, use and alter the property, often requiring the owner's consent before such actions can be undertaken. By law landlord's consent cannot be unreasonably withheld.
- Tenants occupying property for the purposes of their business for a continuous period of five years have an statutory right to renew their lease (at market rent) on expiry unless that right has been renounced (excluded) by the tenant -renunciation can be either before or during the term of the lease . If the lease has not been «contracted out» of the security of tenure regime the owner can only resist a renewal of lease on a limited number of grounds.
- Leases for more than 21 years are registrable at Land Registry.
- A statutory Commercial Leases database operated by the Property Services Regulatory Authority requires the registration of details of all commercial leases granted since 3 April 2012 .

Occupational leases (residential)

- There are a number of different types of short term residential leases available, the majority subject to statutory regimes offering significant protection to the tenant on security of tenure and sometimes rent control.
- Most often encountered are residential tenancy agreements granted after the Residential Tenancies Act 2004. These confer rights to a tenancy for four years where a tenant has been in occupation for 6 months.
- Generally speaking there is no requirement to register residential tenancies at Land Registry but they must be registered with a statutory body called the Private Residential Tenancies Board (PRTB).

RIGHTS AFFECTING OWNERSHIP

→ Easement

- A right which benefits one piece of (dominant) land and burdens another (servient) piece of land, note in this context «land» includes buildings. The two pieces of land affected must be in different ownership.
- In general a legal easement must either take effect as a right «in fee simple» or be granted for a fixed term and if it concerns registered land must be registered at Land Registry. Easements acquired by prescription (long usage rather than formal grant) will need to be registered in Land Registry by 2021.
- Interference with an easement gives rise to an action for private nuisance.

→ Mortgage

- A type of security.
- Whilst any charge granted since 1 December 2009 (by way of legal mortgage) over property does not operate to transfer title to the property to the lender, it creates a legal interest in the property and affords the lender certain rights including a

statutory power of sale in the event of borrower default (as the statutory powers are fairly limited the lender will look to extend them under the terms of the security documentation).

- Must be created by «deed» and, in the case of registered land, registered at Land Registry.

→ Contractual rights

- A variety of other contractual rights affecting land can also be created such as option/pre-emption rights and licences to occupy.
- Property is often subject to restrictive covenants similar to the position in England.

ACQUISITION PROCESS: KEY STAGES

Under ROI law any individual or legal entity, whether resident or non-resident can acquire property. There are no foreign direct investment restrictions. Although the following briefly summarises the process involved in the direct acquisition of property it is often the case in practice that high value properties (or portfolios of properties) are acquired indirectly through a variety of different corporate vehicles including through buying shares in REITs or investing in units in a property unit trust.

→ Marketing

- The marketing of commercial property is usually carried out by a property agent representing the seller. There are legislative controls on guide prices quoted by agents. High value commercial property is frequently marketed through a private tender process.

→ Negotiation

- Commercial negotiations commence once an interested party has been identified.
- While normally until a written sale contract is agreed, signed and dated («exchanged») neither party is legally bound, all written negotiations must be headed "subject to contract". It is common to find non binding «heads of terms» recording the principal commercial terms of the transaction.
- A serious buyer may require an exclusivity period within which to try to agree terms with the seller and lawyers may be instructed to draw up an exclusivity agreement giving the buyer a period of time to undertake its due diligence and «exchange contracts» for the purchase.
- Subject to above lawyers would usually only get involved once the seller and buyer (via their respective agents) have agreed terms.

→ Pre-exchange

- Once terms have been agreed the buyer's lawyer will carry out due diligence. Generally a seller of property is not under an obligation of disclosure to the buyer and the principle of «caveat emptor» (let the buyer aware) is adopted.

- It is also likely that the buyer will instruct a number of other professionals to advise on the transaction eg surveyors and tax advisers.

→ Sale contract

- The sale contract will be negotiated by the parties' lawyers and will contain all the terms agreed between the seller and the buyer including any special conditions required to deal with matters revealed by the buyer's due diligence.
- The buyer become legally bound to complete the purchase and the seller to sell, subject to any conditions specified in the sale contract, once the sale contract has been exchanged (formally entered into).
- Typically a deposit of 10% of the purchase price is payable by the buyer on exchange. If the buyer fails to complete the purchase then the seller may retain the deposit.

→ Transfer

- The sale of the property will be completed on the date specified in the sale contract by way of completion of a separate document known as an assurance. Simultaneous exchange and completion is not common in ROI. More typical is a 4 to 6 week interval between exchange and completion.. the balance of the purchase price will be paid on completion.
- The assurance needs to be registered at Land Registry. Although as between seller and buyer title to the property passes on completion the buyer will not become the legal owner of the property until it has been registered as owner at Land Registry. While a priority search procedure similar to the UK exists, it is not common to avail of it. Completion searches are carried out on the day of completion itself

TAX

→ Direct acquisition of a property

- The acquisition of a property gives rise to stamp duty.
- Stamp Duty is payable by the buyer/tenant (as appropriate).
- On a freehold acquisition the rate payable is a percentage of the purchase price - 2% on commercial property and 1% on the first €1 million and 2% on the excess on residential property; on long leases the same rates apply. On market rent leases, stamp duty of 1% of the average annual rent is paid on leases of up to 35 years.
- Value Added Tax (VAT) which is a form of sales tax may be payable in addition. As a general rule the first sale of a commercial property developed within the previous 5 years is likely to be subject to VAT at the current rate of 13.5%. The sale of an older commercial property is in the main exempt from VAT but a capital goods scheme applies which confers a VAT life of 20 years on a property from the date of development or acquisition. Sales within that adjustment period may trigger a proportionate clawback for the owner on VAT reclaimed. Where this is the case a sale may be the subject of a joint option to tax by seller and buyer. There are transfer of business relief rules in ROI (similar to the transfer of a going concern relief in the UK) . In general leases are exempt supplies but subject to a landlord opting to charge VAT on rents (current rate of 23%).. the sale of residential property by a developer is generally always subject to VAT but otherwise residential property will not attract VAT.

→ Acquisition of shares in a company holding a property

- Stamp Duty at 1% applies to the acquisition of shares in an Irish incorporated company owning a property as opposed to a purchase of the property itself. The rate of duty on the transfer of shares in an Irish incorporated company is also 1%.
- an exemption from stamp duty is available to transfer of units in a Regulated Investment Fund (QIF) that own Irish real estate and interests in an Irish REIT.
- AT is not payable on a share purchase.

→ Holding investment property

- Property rental business profits from Irish land are subject to corporation tax or income tax at rates that depend on the nature of the property owner: 25% corporation tax for Irish resident companies; 20% income tax for non-Irish resident companies; and up to 55% income tax for individuals.
- An exemption from such tax is available to Irish approved charities, pension funds, QIFs and Irish REITs.
- Profits are calculated broadly by reference to accounts prepared on generally accepted accounting principles but with some detailed modifications.
- There are no formal thin capitalisation rules, so for commercial property, 100% debt financing is possible.
- Capital allowances (tax depreciation) are available to set off against such profits in respect of capital expenditure on certain assets that are used in the property rental business at rates of 15% per year on a straight line basis, with 10% in the final year..
- A non resident landlord may suffer a 20% withholding tax on rental payments unless an Irish rent collection agent is appointed..
- Distributions and redemptions from a REIT suffer a 20% withholding tax..
- Distributions and redemptions from a QIF to a non Irish resident do not suffer a withholding tax where a qualifying non resident declaration is submitted.
- Distributions and redemptions from a QIF to an Irish resident suffer tax at a rate of 25% for corporations and 41% for individuals.

→ Disposals

- Gains on disposals of investment properties attract corporation tax for Irish resident companies at an effective rate of 33% and capital gains tax (CGT) at the rate of 33% for Irish resident individuals. Non residents are liable to CGT on gains realised from the sale of Irish real estate or, from the sale of unquoted shares of a company, whose greater value derives from Irish real estate, at the same CGT rates.
- An exemption from CGT is available to Irish approved charities, pension funds, QIFs and Irish REITs
- Income profits on sales of properties acquired and held as trading stock or developed and sold in the course of a trade attract corporation tax at 12.5% for Irish resident companies and non-Irish resident companies that trade in Ireland through a permanent establishment and up to 55% income tax for individuals.
- Gains of a capital nature made by persons that acquire (or develop) land with the sole or main purpose of realising a gain from disposing of the land or anything deriving its value from the land (when developed) may be subject to Irish income tax if their activity is not subject to Irish tax on trading profits,

though non-residents may be able to obtain relief from such tax under any applicable double tax treaty with Ireland

→ Temporary Exemption.

- Property purchased in Ireland or in the EU before December 31, 2014 and held as investments for at least 7 years, by a company or an individual will be eligible for exemption from CGT or corporation tax on chargeable gains, on a proportion of the gain. 100% exemption applies if the disposal occurs at the end of year 7 otherwise the exempt part of the gain is calculated by multiplying the gain by the factor 7/n, where "n" equals the number of complete years of ownership.



Italy has the fifth largest investment market in Europe by stock, with investment focussed on the cities of Milan and Rome. As a G8 economy, Italy is firmly established as major European destination for global capital, as well as having its own substantial real estate industry.

The market has been dominated by domestic investors, representing close to two thirds of activity. Italy also attracts capital from overseas, including global funds, Middle Eastern, UK and US capital. Growing overseas capital has helped support the recovery in the Italian market.

Outside of the core focus on office and retail assets, Italy also sees demand for industrial and logistics premises around the major conurbations. International business and resort hotels are also keenly sought after.

Italy has a relatively small REIT industry, but a strong and vibrant fund management business, particularly for unlisted institutional funds. Preferential tax treatment also makes unlisted funds a viable investment route for international investors.

The Italian property market has historically shown relatively stable performance, although latterly the property cycle shows evidence of becoming longer and deeper. There are active domestic and foreign lenders, although financing at present is limited largely to income producing assets.

In recent years availability of debt has been restricted to core assets at relatively low loan-to-values. Over the past year we have seen improvements to lending conditions. The majority of debt remains sourced from traditional banks.

Market sizing

	Italy	Europe
Invested stock* (Total stock)	EUR 245bn (EUR 730bn)	EUR 3,380bn (EUR 8,150bn)
Liquidity ratio* (10y average)	1.4% (2.0%)	4.0% (4.5%)
2013 volumes (10y average)	EUR 3.5bn (EUR 5.0bn)	EUR 139bn (EUR 135bn)

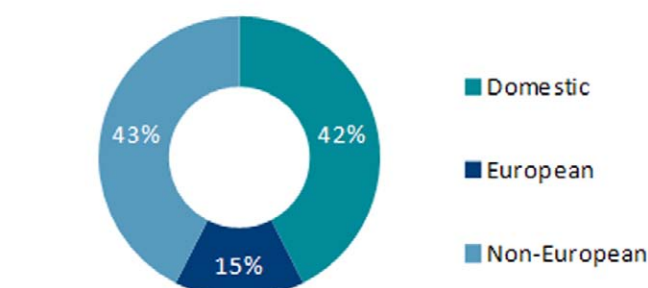
* 2012 figures

Market pricing - Milan (Q4 2013)

	Office	Retail	Industrial
Current Yield	6.50%	5.25%	8.25%
Min/Max (10y)	5.15-6.15%	5.00-6.00%	6.90-8.25%
Yield definition	Net initial yield		

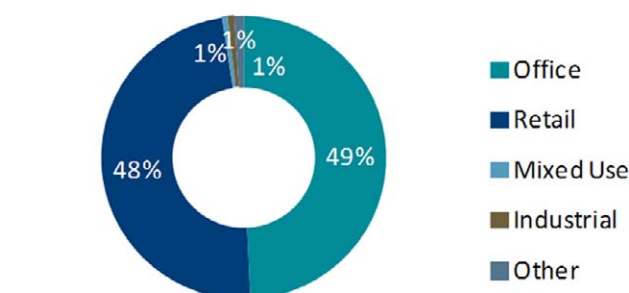
Source : DTZ Research

Investment activity by source of capital, 2013



Source : DTZ Research

Investment activity by asset type, 2013



Source : DTZ Research

PROPERTY LAW

TYPES OF OWNERSHIP

→ Freehold

SUPERFICIAL OWNERSHIP

(THE RIGHT TO BUILD ON A DIFFERENT OWNER'S PROPERTY)

Ownership

- The right to use, receive the benefits of, and dispose of a property in the most absolute manner, within the limit of the Law (art.832 civil code).
- Any title, transfer or charge on the ownership right must done in writing. The deed is enforceable towards third parties only if executed before a public official (notary) recorded in the Conservatory of Public Records (*Conservatoria dei registri immobiliari*).

Co-ownership

- Defined by Law.
- Ownership by various persons of a property or a group of properties divided into co-ownership units (*quote di comproprietà*).
- Consists in:
 - privately owned areas ;
 - rights over (ie. share in) the common areas (*parti comuni*).

Condominium

- When there are more than one unit in a building there will be co-ownership of common parts and a condominium is automatically created.
- Normally is ruled by a rulebook (*regolamento di condominio*) which identifies each unit with a number, indicates its location and includes a complete description of the private and common areas and the millesimal quotas, which are calculated according to the surface of each private units.
- The decisions related to the common parts are taken with the majority of the millesimal quotas.
- Common parts may be included in the private units (main walls, roof, foundations, façade. The privet unit stakeholder may modify the common parts included in the private unit with the authorization of the condominium of with prove of the safety of the works, certified by an independent expert.
- Each co-owner has a right to use the common areas and shares the related service charges.

Owners' consortium (in development plan implementation)

- Division of the property into units of different shapes and sizes, each with its own straightforward right of ownership entitling its owner to build, with or without the right of co-ownership of common parts.
- Often used for land development plans owned by various owners (private as well as public entities).
- Each owner automatically is entitle of a quota of buildable rights and responsible for the construction of the urbanization works even if he did not executed the development agreement.
- The owners' management consortium is normally formed and

its main role is to own and manage common facilities.

- The consortium is the counterpart of the City for the construction and the maintenance of the urbanization works.

Long-term lease (*enfiteusi*)

- Tenant is granted a right *in rem*, which can be mortgaged and transferred.
- There are no limit to the duration.
- Tenant has the right to construct a building, grant leases and active or passive easements for the maximum term of the lease.
- Tenant is responsible for operating the building and paying a consideration.
- To ensure that it is enforceable against third parties, the lease must be drafted under a notarized form and registered in the public records book (*conservatorio registri immobiliari*).
- It is not often used due to fiscal reasons (subject to transfer tax for the global amount of the fees due fo the duration of the contract).

RIGHTS AFFECTING OWNERSHIP

→ Easement (*servitude*)

- Is a burden imposed upon a property, for the use and utility of another property belonging to another owner.
- Is exercised to the detriment of the property assets which they encumber - servient land (*fondo servente*) - and to the benefit of adjoining assets which they enhance - dominant land (*fondo dominante*).
- As an attribute of the right of ownership, easements are transferred with the related tenement.
- While the owner of a dominant land may, at its expense, carry out any work required to use or to preserve the easement, it is not entitled to do anything to aggravate the situation of the servient land; the owner of the servient land must allow the easement to be exercised without doing anything to restrict it.

→ Mortgage (*ipoteca*)

- Is a security encumbering the asset, which entitles the beneficiary to a preferential right over other creditors in the event of a forced sale of the relevant asset.
- Confers a selling right entitling a secured creditor to force the sale of the asset offered as security in auction, even if it is in the possession of a third party.
- Any property may be mortgaged and there is no limit on the number of mortgages that may be created over the same property.

→ Lender's pledge (*mutuo ipotecario*)

- Is a right, ruled by special law, derived from the lender's claim for preference over other creditors not recorded in public records before the registration of the pledge.
- Applies only when the acquisition of the property is financed by a loan, provided that the loan agreement is executed by notarial deed.

→ Pre-emption right

- Is the statutory option provided to certain public authorities or to tenant operating business open to the public to substitute an acquirer in a real estate transfer for purposes of general public interest (i.e. historical value for the public authorities, the goodwill of the operator for the private business).

ACQUISITION PROCESS: KEY STAGES

Foreign investors wishing to carry out real estate transactions do not need any prior authorization.

→ Negotiations

- As a preliminary step, a non-disclosure agreement is proposed by the seller/agents in order to allow access to the property, information and documentation (not compulsory).
- The would-be purchaser issues a letter of intent which may be indicative or binding (not compulsory).
- Discussions are usually pursued within the frame of a preliminary agreement providing for an exclusivity period during which the due diligence exercise is carried-out and at the expiry of which the would-be purchaser is expected to confirm its initial offer.

→ Preliminary contracts

- Preliminary contracts provides for the terms and conditions of the sale whereas the final transfer remains subject to the fulfillment of certain conditions.

Bilateral undertaking to Sale and Purchase Agreement (*compromesso di vendita*)

- Is the reciprocal undertaking to sell and to purchase where both parties are committed to transfer the property.
- The transfer remains subject only to the fulfillment of condition precedents.
- It may be recorded in the public records to prevent the seller to sell to any other party. Recording is mandatory in the off-plan preliminary agreement used in the construction business.
- If breached by the vendor it may trigger a court decision with a compulsory transfer of the asset or the payment of the double of the deposit.

Option to buy (*Opzione di acquisto*)

- Is the bilateral agreement or the unilateral declaration granting one party the option to buy a real estate asset. It may be formulated as option to a preliminary agreement or option to a final transfer, according to the wording used.

→ Deed of sale

- Is the deed according to which the ownership of a property is transferred from the seller to the buyer; it is necessarily notarized and usually it is the fulfillment agreement of the preliminary contract.
- There is no re-negotiation of the terms and conditions of the sale which have been agreed at the stage of the preliminary contracts.
- The sale shall be registered recorded in the public records book (*conservatorio registri immobiliari*).
- Warranties (i) for claims over the property aiming to evict the purchaser and (ii) for hidden defects, are the two mandatory warranties which by law are incumbent upon the seller of a real property.

Off-plan sales (*vendita di cosa futura*)

- Used for selling buildings that have not yet been constructed.
- The seller is committed to erect the property in accordance with agreed specifications, price and deadline; the seller provides the purchaser with completion and defects guarantees.
- The purchaser pays the price gradually along the construction steps until completion.
- At the date of the deed of sale, the transfer of ownership automatically applies to the land and existing construction.
- The seller remains liable for construction defects under ten-year legal constructors' warranties for structural defects.
- Rarely used because of the risk connected with the automatic transfer (i.e. in the event of bankruptcy of one party).

COMMERCIAL LEASES

Leases of buildings used for commercial purposes are covered by specific provisions codified in the Civil Code.

Certain provisions of the commercial leases may be freely agreed by the parties, such as:

- the initial rent (which can not be variable)
- the service charges.

However, commercial leases must comply with some mandatory rules.

→ Duration: initial term of the lease

- May not be less than 6 + 6 years: the parties may agree on a longer term.
- Leases longer than 30 years must be recorded in the public records book (*conservatorio registri immobiliari*).
- Unless otherwise provided, the lessee may terminate the lease on expiry of each six-year period.
- The lessor may not terminate the lease at the expiring of the first six year period unless needed for restructuring of the building.
- At any time the lessee may terminate the lease for grave motivations (*gravi motivi*). This clause may not be mitigated or voided in the lease contract. The motivations (i.e. liquidation of the company, closing of the regional office, grave crisis in the market sector etc.) are evaluated by the court if the termination is challenged.

- At any time the lessee has a pre-emption right to purchase the premises, if the seller is going to sell. This does not apply if the seller sales the whole building.
- At any termination the lessee has the right, if forced to leave for termination of the contract and not for breach of payment, to receive a compensation from the lessor equal to 18 months of rent.

→ Lease of business' branch (*affitto di ramo d'azienda*)

- To avoid the limitations of the civil code, the lease of business is often used, specially in premises located in shopping centres.
- The parties need to demonstrate which branch of business is leased.
- In the shopping centres the general licence to open and operate the centre helps to deem the single premise as branch of one main business.

→ Transfer of business in the lease contract

- Principle of freedom of assignment of the business apply to lease of business only. Right to sublease may be granted in the lease agreement.

→ Evolution of the rent during the initial lease

- Rent is usually yearly adjusted in accordance with an indexation clause providing for an evolution of the rent on the basis of ISTAT (National Institute of Statistics) index:
 - 75% (maximum) for the commercial contracts with 6+6 years duration.
 - up 100% for residential contracts or longer commercial contracts (7+6 minimum).

→ Term of the renewed lease

- No increase of rent is possible after the first 6 years period. At the end of the 12 years period free negotiation is foreseen by the law.

TAX

→ Tax regime applicable to an asset deal

- The building transfer is subject to a different VAT and transfer tax treatment depending on the cadastral enrolment.
- Mainly, the applicable indirect taxation depends if the building, or units in which it is divided, are registered for residential purposes or for commercial purposes.
- The tax regime is the following, assuming that the purchaser is an Italian incorporated and VAT registered company.

Commercial

- Commercial buildings are subject to two different VAT regimes:
 - Exemption regime (ordinary regime)
No VAT has to be added to the transaction; the total amount of the cadastral and mortgage taxes will be equal to the 4% of the purchase price, plus registration tax amounting to a fixed amount of 200 Euros;
 - 22% VAT regime (optional regime)

The vendor may opt for the common VAT regime (VAT is applied at a 22% rate to the transaction price). Should this be the case, the reverse charge mechanism has to be applied by the purchaser: it means that the vendor will issue an invoice with no VAT and the purchaser must issue a further document (so called self-invoice) quoting the 22% VAT rate. The vendor's invoice will have to be registered in VAT registers both as input and output VAT. Accordingly, neither economic nor financial will affect the purchaser; it is worth mentioning that this regime is fully available provided that the purchaser is not subject to a VAT exemption regime on the future sales, which could otherwise imply a partial recapture of input VAT related to the asset deal, quantified in proportion to the ratio between VAT exempt and non-exempt sales.

The total amount of the cadastral and mortgage taxes will be equal to 4% of the purchase price; a further transfer tax of 200 Euros will be added.

Residential

- Residential units are only subject to the VAT exemption regime. In such a circumstance a transfer tax of 9% of the purchase price will be due. In addition, further cadastral and mortgage taxes amounting to 100 Euros in total will be applied.



KAZAKHSTAN



RIGHTS AFFECTING OWNERSHIP

→ Easement (*servitude*)

- Is the right of limited target-oriented use of someone else's land, including the passage, laying and operation of the necessary communications, hunting, fisheries and other needs;
- Easement may occur:
 - 1) directly from the normative legal act;
 - 2) based on the agreement of the person concerned with the land owner or land-user;
 - 3) based on an act of the local executive body;
 - 4) pursuant to a court decision;
 - 5) in other cases stipulated by the legislation of the Republic of Kazakhstan.
- The emergence, change and termination of easements are the subject to state registration at the legal cadastre, providing the rights to the rights holder to use someone else's land in a limited targeted order, unless otherwise provided under the Land code and the legislation of the Republic of Kazakhstan on state registration of rights to immovable property.

→ Mortgage (*hypothèque*)

- The mortgage is recognized as one of the method of security of obligations. Under the mortgage a mortgagee is entitled in the event of default by the debtor of the secured obligation to obtain satisfaction from the value of the mortgaged property prior to other creditors of the person who owns the property (mortgagor).
- Mortgage may arise under an agreement executed between the parties.
- The mortgage of the immovable property is subject to the state registration with the Ministry of Justice.

→ Lender's pledge (*privilège de prêteur de deniers / PPD*)

- Pledges are also recognized by local laws. In term of pledge agreement the subject of the pledge is transferred to the possession of the pledgee. The pledge of the immovable property is subject to the state registration with the Ministry of Justice.

→ Pre-emption right

- We understand that the right of third parties to by the real state property in case of its selling by the owner is meant by pre-emption right. As a general rule no third parties have the pre-emption rights to the immovable property being sold.

ACQUISITION PROCESS: KEY STAGES

→ Negotiations

- As a general rule the parties are free in choosing terms and conditions of agreement.

→ Preliminary contracts

- According to the preliminary contract, the parties undertake to enter into a future agreement on the transfer of property (basic contract) under the conditions provided by the preliminary contract. The preliminary contract shall be executed in the form prescribed by law for the basic contract, and if the form of the basic contract is not stipulated, it is to be executed in writing. Failure to comply with the rules on the form of the preliminary contract shall entail its invalidity. Preliminary contract must contain conditions allowing establishing the subject, as well as other significant terms of the basic contract. A preliminary agreement shall specify the period within which the parties undertake to conclude the basic contract. If such term in the preliminary contract is not specified, it is subject to the execution of a basic contract within a year from the date of signing the preliminary contract. In cases where a party has entered into a preliminary agreement evades to sign the contract provided, it must compensate the other party the losses caused by the named actions, unless otherwise provided by the Kazakhstani laws or contract. Obligations provided by the preliminary contract shall be considered as terminated if it is not executed before the end of the period within which the parties must enter into the basic contract, either one of the parties gives the other party an offer to execute the basic contract.

→ Deed of sale

- The deed of sale must be executed under the sale and purchase contract, wherein one party (the seller) undertakes to transfer property in ownership, economic or operational control of the other party (the buyer), and the buyer agrees to take the property (goods) and pay him an agreed sum of money (the price).
- The agreement of sale and purchase of any real estate is the subject to state registration.

COMMERCIAL LEASES

The commercial lease is regulated by the Civil Code. Under the commercial lease agreement the lessor shall provide the lessee with the entire enterprise as a property complex for a fee for doing business in temporary possession and use, including the right to a trade name and (or) the commercial designation of the authors, to protected commercial information, as well as other facilities provided by the contract of exclusive rights - a trademark, service mark, etc. (complex of exclusive rights), except for those rights and obligations which the lessor may not transfer to others.

→ Duration : initial term of the lease

- The initial term of commercial lease agreement is not specified by the laws of Kazakhstan. We note that this issue is the subject to the negotiations between the parties.

→ Transfer of business

- The transfer of the enterprise is carried out on the basis of transfer and acceptance act. Preparation of the enterprise to the transfer is the responsibility of the lessor unless otherwise provided by a lease agreement.

→ The environmental appendix

- The law do not require such document for commercial lease.

Evo- lution of the rent during the initial lease

- Subject to the negotiations and agreement of the parties.

→ Term of the renewed lease

- The term of the renewed lease is not specified by the law and may be agreed by the parties.

→ Rent on renewal

- The law do not specify the issues on the rent in case f renewal of the lease. This issues is up to the agreement of the parties.

TAX

→ Direct acquisition of a property (non-residential buildings)

- The acquisition of a non-residential building (or part thereof) from a seller liable to VAT is automatically subject to VAT which is levied at the standard rate of 12% and assessed, in principle, on the purchase price.
- Notary's services are the same as in the case of residential property. The registrar fee will be in the range from 926 KZT (\$ 6) for a garage to 46,300 KZT (\$ 300) for non-residential property complexes including more than ten separate objects.

→ Acquisition of shares/interest in a company holding a property

- The sale of interest in a real estate company (shares in joint stock company/interest in a partnership) does not result in taxable turnover for VAT purposes.
- Change of ownership in a company also gives rise to a registrar fee (fee for state registration of legal entities) of 12,038 KZT (\$ 78), as well as the state duty and any other notary's fees.

→ Asset deal vs. share deal

- Acquisition of the shares/interest in a company may generate tax savings in terms of VAT (in the case of non-residential premises), but it may also have other indirect tax consequences (eg. inheritance of potential tax liabilities, no right to depreciate shares/interest). At the same time, the future income from the sale of shares/interest in a company (capital gain) may not be subject to income tax in Kazakhstan provided that:
 - the seller holds the shares/interest for more than 3 years,
 - the company is not a subsoil user and does not own (directly or indirectly) shares/interest in entities which are subsoil users,
 - the seller is not registered in a jurisdiction with preferential taxation.

All amounts are effective as of 1 January 2014 (1 monthly calculation index = 1,852 KZT, \$ 1 = 155 KZT).



The real estate market in Latvia is steadily recovering from a complete standstill. Many investors wish to benefit from low construction prices and developers are maximizing the potential of their assets. Tenants are optimizing their leases, and in some sectors demand exceeds supply. This unique situation can greatly benefit the knowledgeable and the quick-witted.

The Latvian market is still in its infancy and this is reflected in the size of its stock. Despite being one of Europe’s smallest markets it has been evolving rapidly over the past decade. We expect this trend to continue and will offer opportunities for investors.

Latvia with its policy of conferring residency status through investment in real estate attracts a lot of interest from private individuals from Russia and CIS (Commonwealth of Independent States) countries. Many concentrate their activity towards the capital city of Riga. Latvia is also on the active list for institutional investors coming from within the Baltic region itself (Estonia in particular) and from Scandinavian countries. Asset transfer deals and share transfer deals are both common practice, whereas institutional investment within the country is limited to close-ended real estate funds managed by asset management companies.

Debt funding for existing commercial assets is relatively easy to obtain, whereas development opportunities have to be backed-up with a clear asset development strategy. With the recent accession to Eurozone, capital availability improved; the capacity of developers is still under-exploited, whereas government policy is generally favourable.

Market sizing

	Latvia	Europe
Invested stock* (Total stock)	EUR 6bn (EUR 14bn)	EUR 3,380bn (EUR 8,150bn)
Liquidity ratio* (10y average)	1.3% n/a	4.0% (4.5%)
2013 volumes (10y average)	EUR 0.1bn n/a	EUR 139bn (EUR 135bn)

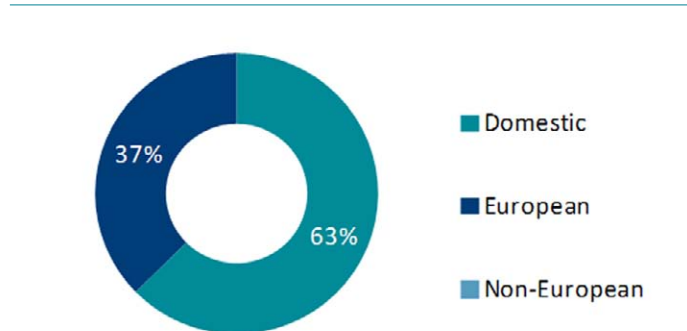
* 2012 figures

Market pricing - Riga (Q4 2013)

	Office	Retail	Industrial
Current Yield	7.50%	7.00%	9.50%
Min/Max (10y)	6.50-11.00%	6.00-11.00%	9.50-13.00%
Yield definition	Net initial yield		

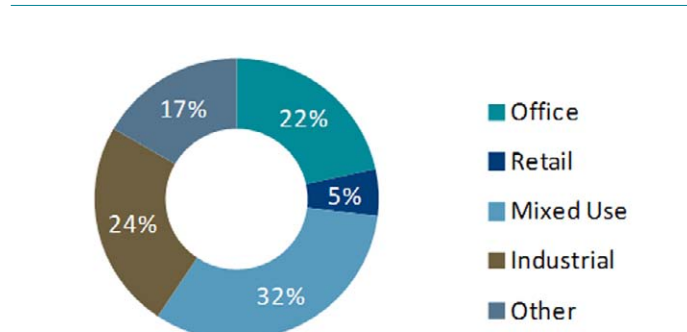
Source : DTZ Research

Investment activity by source of capital, 2013



Source : DTZ Research

Investment activity by asset type, 2013



Source : DTZ Research

PROPERTY LAW

TYPES OF OWNERSHIP

➔ Freehold

Ownership

- Ownership right as an absolute right is enforceable against all third parties and includes the right to use, possess, receive the benefits of, and dispose of a property, subject only to lawful rights of third parties.
- Any right in rem (including title, mortgage, lease and similar) is binding as against third parties only if registered with the Land Register (called “*Land Book*”). The person registered with the Land Register as the owner of the real estate is deemed to own the title to the real estate.
- Land Register is public and is accessible electronically. Land Register recording is done by property units.

Co-ownership

- Co-ownership of the same unit of real estate by more than person is regulated by the law. Co-owners are deemed to own the property in “ideal parts”.
- Co-owners may enter into agreement on separated use of various parts of the jointly owned property and register the separated use with Land Register. The registered use rights are binding upon any new owner of any part of the real estate.
- Each co-owner has a right to separately mortgage its ideal parts, but disposal (including construction) of the real estate in its entirety requires consent of all the co-owners.
- The Law on Apartment Ownership distinguishes a separate form of ownership- “apartment ownership” where each owner of the condominium is deemed to own an apartment and an ideal share of the multi-apartment building (and land, where applicable). Concept of co-ownership is modified in relation to the apartment ownerships and is less restrictive.

Volume

- The minimum area of the land plot is prescribed by municipal zoning regulations in each municipality and may vary depending on the characteristics of the area and historic values.

➔ Leasehold

Construction Right of the Tenant

- The Latvian law in general does not recognize a leasehold ownership for this purpose. Although for historic reasons there may exist separate ownership of land and buildings, the legal system aims to treat the buildings as improvements on the land and to limit the future separation of ownership of land and buildings situated on the land. However, by way of exception the tenant is entitled to build and register the construction works (building) as a separate property owned by the tenant for the duration of the lease term if such right is agreed in the lease agreement and the term of the lease agreement is not less than 10 years

Long-term Lease Registered with the Land Register

- The parties to the lease agreement possess high degree of free-

dom to agree on the contractual terms of the lease.

- There is no requirement of minimum or maximum term of the lease. The landlord and the tenant may agree to register the lease agreement with the Land Register. If so registered, the tenant is granted a right in rem. Lease rights may not be mortgaged, however the claim rights under the lease agreement may be pledged by way of registered movable property pledge (in the Commercial Pledge Register).
- Registration of the lease with the Land Register requires a written form lease agreement (in Latvian or accompanied by a Latvian translation) and a notarized application in a statutory form to register the lease.

Residential Lease

- There exists a separate statute and regulation on residential lease agreements. This law to a large degree continues to serve a social function and protects tenants with open-ended lease contracts against termination, amendment or increase of the rent so far as the tenant complies with the payments and material obligations. The residential lease agreements are binding on the buyer regardless of its registration with the Land Register.

RIGHTS AFFECTING OWNERSHIP

➔ Easement (*servitude*)

- Is a burden imposed upon a property, for the use and utility benefiting another property which belongs to another owner.
- Has to be registered with the Land Register and from the moment of the registration shall be deemed a right *in rem*.

➔ Mortgage

- Is a security encumbering the real estate, which entitles the beneficiary to a preferential security right over other creditors in the event of a forced sale of the relevant asset or insolvency of the owner.
- Mortgage right is valid and enforceable against third parties only if registered with the Land Register. Registration requires filing of a notarized registration request in statutory form accompanied by a written mortgage agreement;
- In addition to the mortgage itself it is customary to register with the Land Register an accompanying prohibition on the owner to sell, transfer, repeatedly mortgage, lease or otherwise dispose with the property without prior written consent of the mortgagee (without such prohibition the property may be freely transferred as encumbered with the mortgage).
- Mortgagee is entitled to expedite enforcement process against the mortgaged property with a decision by a judge unilaterally in a written process. However no concept of lender’s pledge or an type of enforcement without the involvement of the court exists in Latvian law.

➔ Pre-emption right

- Can exist on statutory basis or may be contractually agreed.
- An option is provided by law for municipalities to substitute themselves as acquirer in a real estate transfer for purposes of the general interest. This municipal option does not apply to the transfer of ideal shares.
- Each co-owner of a jointly owned property (save for the apartment ownership) has a right of pre-emption in case of sale of the ideal shares of that property.

- An owner of land has pre-emptive right in case of sale of buildings located on the land which are owned by another person.

→ Zoning Requirements

- The permitted and intended use of a land plot is subject to municipal zoning regulations, which may reserve certain parts of the land for future infrastructure development plans. Such “reserved territories” are not always identified in the records of the Land Register or the plans of the land plot. Careful examination of the territorial planning documents is especially advisable in case of acquisition of development properties/projects.

ACQUISITION PROCESS: KEY STAGES

- Although in general foreign investors from EU wishing to carry out real estate transactions do not need any prior authorisation, certain restrictions do exist, namely :
 - until April 30, 2014, citizens of other EU Member States and legal persons registered in the other EU Member States (with certain exceptions) are prohibited to acquire ownership of agricultural land and forest land in Latvia. There is a political debate on extending this term and/or providing specific eligibility criteria for qualified owners of agricultural and forest land. Foreigners from non-EU countries are prohibited to acquire:
- Foreigners from non-EU countries are prohibited to acquire:
- Urban land: in state frontier areas, protected coastal areas of the Baltic Sea and Riga Bay, and other public bodies of water; agricultural and forest land;
- . rural land: land in state frontier areas, nature reserves, agricultural and forest land, protected coastal areas of the Baltic Sea and Riga Bay, mineral deposits of national importance;
- Note: Foreign (non-EU countries) persons are not prohibited to acquire shares in a company which owns real estate in Latvia. However, there are certain restrictions on the companies themselves in connection with making new acquisition of land in Latvia.
- Foreigners from non-EU countries wishing to acquire urban land (other than the restricted territories specified above) need to report the acquisition documents and intended use of the property to the respective municipality.

→ Negotiations

- This stage is not regulated by law, but rather based on a customary practice
- As a preliminary step, a confidentiality and non-disclosure agreement is usually proposed by the seller/agents in order to allow access to the property, information and documentation;
- Exclusivity period can be agreed during which the due diligence exercise is carried-out and at the expiry of which the would-be purchaser is expected to provide an offer or confirm its initial indicative offer.

→ Preliminary contracts

- Preliminary contracts are common in Latvia, but are not statutorily required. Preliminary contract is a conditional agreement aimed at conclusion of the purchase agreement in the future.
- Parties are free to choose the extent of regulation in the preliminary contracts, however, more detailed provisions ensure higher certainty and less negotiation in the stage of the final purchase agreement.
- Preliminary contract commonly provides for contractual penalties if the other party refuses to conclude the purchase agreement for unjustified reasons.
- Liability of a party for failure to comply with the preliminary contract may arise not for the failure to deliver the property or for failure to pay the purchase price, but rather for the failure to conclude the final purchase agreement.
- As a specific form of preliminary contract the law provide for a downpayment agreement, although also the preliminary contract may include provisions on paying in advance a small portion of the purchase price.
- It is not customary to structure the preliminary contracts as call option arrangements, however the parties may freely choose to structure their relations this way.

→ Agreement of Purchase and Sale

- Only real estate registered with the Land Register can be sold and transferred, and only by its registered owner.
- There is no statutory requirement that the purchase agreement itself should be notarized. Nevertheless, the parties must execute a notarized registration application to the Land Register in a statutorily designated form.
- Usually there is no re-negotiation of the terms and conditions of the sale which have been agreed at the stage of the preliminary contracts, except if subject to due diligence findings;
- Transfer of ownership must be registered with the Land Register. Registration with the Land Register has to be made within 10 days from the receipt of all appropriate documentation.
- By law, the seller is liable for the defects that the seller has concealed or not disclosed in bad faith, and for the lack of qualities of the property that the seller has expressly warranted. In case of breach of warranty, the buyer has a claim for either: (i) annulment of the purchase agreement which expires in 6 months from the date of purchase; or (ii) reduction of the purchase price which expires in one year from the date of purchase.
- Unless agreed otherwise, all risk in relation to the property is transferred to the buyer as of the moment of the purchase.

Off-plan sales

- No such specific type of agreement or legal relationship is regulated under Latvian law, however, the land together with design documentation and/or construction works can be sold at any stage, including by retaining the obligation to perform and finalize the construction works. The parties are free to agree on the terms, conditions and transfer of risks that regulate their legal relationship.

COMMERCIAL LEASES

There is no special regulation or codification of provisions applicable to commercial leases, i.e. leases of buildings or parts thereof used for commercial purposes.

Lease agreements can be entered into in a freely chosen form at the discretion of the contracting parties.

There is no statutory requirement as to the term of commercial lease. Minimum term for the lease with independent construction right of the tenant is 10 years. The lease becomes effective as of the date indicated in the lease agreement.

The law does not provide for the rights of a lessee to extend or renew the commercial lease term; however, such rights could be individually agreed upon in the lease agreement.

The statutory grounds for termination of the lease by either the tenant or the landlord customarily are rather limited and customarily are expanded contractually in the lease agreement.

If the lease agreement is not registered with the Land Register, the lease agreement would not be binding on the buyer of the property.

If the tenant terminates the lease prior to its term without lawful grounds, the rental payments shall be paid through the lease term, unless agreed otherwise in the lease agreement.

→ Transfer of business

- Under the principles of Latvian law only the rights, but not the obligations, may be assigned without consent of the other contracting party. The landlord may therefore freely assign its rights, including rights to the income stream, under the lease.
- Latvian law recognizes the principle of transfer of business and, if the tenant transfers its business, the lease contact would be deemed included in the transferred undertaking and the transfer binding on the lessor. The transferor and transferee remain jointly liable to the lessor as the creditor for liabilities created prior to the transfer and coming due within five years after the transfer.
- Validity of restrictive clauses:
 - transfer or assignment of the lease itself, without transfer of the business, may be prohibited contractually.
 - although not customary and tested by Latvian courts, the lease contact can seek to establish that in the case of assignment of the lease, the original tenant remains jointly and severally liable with the assignee for the tenant's obligations under the lease, in particular for the payment of rent and charges.

→ The environmental appendix

- Latvian laws do not require any conformity certificates or “green appendixes” to be addressed in commercial lease relations.

→ Evolution of the rent during the initial lease

- There are no statutory restrictions on the amount of the rent under commercial lease contracts. Parties usually agree on a fixed fee payable on a monthly (sometimes on a quarterly) basis in advance. Turnover rent quite often is introduced in major retail leases in addition to the fixed (base) rent.
- It is a common practice in Latvia that the rent is adjusted annually based on the consumer price index or other formula agreed individually by the involved parties.

→ Term of the renewed lease

- There are no statutory requirements applicable to any renewals of the lease or the term of such renewal, regardless of the term of the original lease. The parties can agree upon a right to renew the lease after its expiration and on the rental fees applicable to such renewed lease period.

TAX

→ Direct acquisition of a property

- Upon acquisition of the real property a state fee for the registration of title is payable in the following amounts:
 - 2 % of the value of property consisting of land and buildings or property consisting only of a non-residential building or buildings and engineering installations associated therewith, but capped at EUR 42,686.15 ;
 - 6% of the value of the residential property (apartment), if the acquirer is a legal entity conducting business;
 - 1% of the value of the real estate if it is contributed to the share capital of a capital company;
 - 3% of the value of the real estate acquired on the basis of a gift agreement.
- The state fee is multiplied by factor 1.5, if the purchase agreement is submitted to the Land Register later than within 6 months from the execution date.
- The sale of unused real estate is subject to 21% VAT on the sales price, while taxable value for sale of unfinished buildings is the difference between sales value and acquisition price. If a refurbished building is sold within one year of completion, VAT is charged on the difference between its selling price and value prior to refurbishment.
- Sale of land under development is subject to 21% VAT.
- Capital gains of the seller (legal entity) are taxed as ordinary income except for gains from the sales of shares which are exempt from taxable income.
- If real estate (or shares in a company with Latvian real estate constituting 50% or more of its assets in the year of sale or in the previous year) is sold to a Latvian resident by a non-resident, the resident purchaser must withhold 2% withholding tax from the entire purchase price.

→ Acquisition of shares in a company holding a property

- In case of purchase of shares in a real estate holding company the above mentioned state fee for registration of title does not apply, as it is a fee for recording the title changes in the Land Register. The transfer of shares of real estate holding company is not VAT taxable transaction. Capital gains from the sale of shares by Latvian resident company are exempt from taxable income.

→ Asset deal vs. share deal

- There are clear cost and tax saving benefits in case the real estate in Latvia is purchased by way of share deal. Share deal also allows for automatic transfer of all the contracts and rights (such as lease, construction, design) related to the real estate, nevertheless, the risks of assuming contingent liabilities should also be carefully evaluated on case by case basis.



LITHUANIA



Market sizing

	Lithuania	Europe
Invested stock* (Total stock)	EUR 4bn (EUR 40bn)	EUR 3,380bn (EUR 8,150bn)
Liquidity ratio* (10y average)	5.0% (1.0%)	4.0% (4.5%)
2013 volumes (10y average)	EUR 0.2bn (EUR 0.1bn)	EUR 139bn (EUR 135bn)

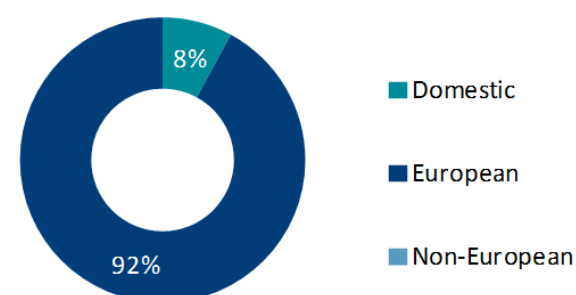
* 2012 figures

Market pricing - Vilnius (Q4 2013)

	Office	Retail	Industrial
Current Yield	8.00%	7.75%	9.75%
Min/Max (10y)	6.25-11.00%	6.00-11.00%	7.00-13.00%
Yield definition	Net initial yield		

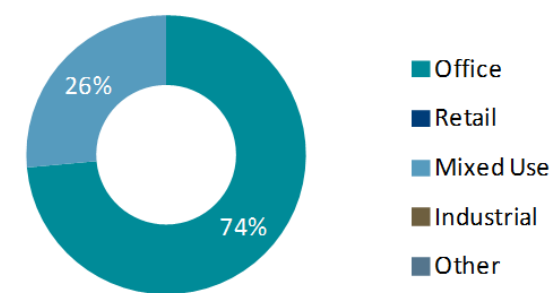
Source : DTZ Research

Investment activity by source of capital, 2013



Source : DTZ Research

Investment activity by asset type, 2013



Source : DTZ Research

Lithuania, along with its Baltic neighbours, Latvia and Estonia is one of the smallest markets across Europe. Lithuania's invested stock is a modest EUR4bn, although with an estimated total stock of close to EUR40bn, the country represents an opportunity.

The Lithuanian market grew rapidly from 2000, and was spurred on by some cross border investment in 2003, when Baltic Property Trust from Denmark made its first acquisition in the country. Accession to the European Union also spurred more cross border investment from a market previously controlled by local investors and developers.

In the wake of the financial crisis the market has struggled, although aggregate gearing has been relatively modest and this has been reflected in low levels of foreclosures.

Within the last two years, market activity has gradually improved. The oversupply of commercial premises has been successfully absorbed. In 2012, new developments in the office segment commenced; in 2013, retail projects that were put on hold five years ago have been re-introduced into the active pipeline.

Developments across all commercial real estate segments are not confined to capital city Vilnius. Substantial interest is also generated by the second largest city Kaunas, a crossroad to multiple international auto arteries, and international seaport Klaipeda. Secondary cities Panevezys and Siauliai are also on the list for investors.

PROPERTY LAW

TYPES OF OWNERSHIP

→ Freehold

Ownership

- Civil Code of the Republic of Lithuania defines ownership right as the right to: possess, use and dispose of an object of ownership right at one's will, without violating the laws and the rights and interests of other persons;
- Ownership right must be registered on the Real Estate Register.

Co-ownership

- According to the Civil Code co-ownership right is the right of two or several owners to possess, use, and dispose of the object of the right of ownership held by them as common;
- The object subject to common partial ownership is possessed, used and disposed of by a common agreement of co-owners;
- Co-owners enjoy the right to buy the share in sale of the commonly owned property at a price at which it is sold, and under the same conditions;
- Expenses related to property maintenance and preservation, taxes, dues and other payments are paid by each of the co-owners in proportion to their respective shares.

→ Leasehold

Lease of buildings, construction works and installations

- A contract of lease of buildings, construction works and installations shall have to be formed in written form;
- It may be invoked against third persons only if it is registered in the Real Estate Register;
- Lease may be fixed-term or concluded for an indefinite period, but in all cases the period of lease may not exceed one hundred years;
- The payment of lease shall be determined upon the agreement between the parties.

Lease of land

- The subject matter is a plot of land (or a part thereof) in the state or private ownership formed in accordance with the project of land-use planning or any other detailed document of territorial planning, and registered with the Real Estate Register within the procedure established by laws;
- A land lease contract shall have to be formed in written form;
- It may be invoked by the parties against third persons only if it is registered with the Real Estate Register;
- The duration of lease of land in private ownership shall be established upon the agreement between the lessor and the lessee;
- The duration of lease of public land shall be established upon the agreement between the lessor and the lessee; nevertheless, the term may not exceed ninety-nine years;
- A shorter maximum duration of a land lease contract may be stipulated by laws.

Long-term lease (*emphyteusis*)

- Is a right to use the plot of land or other immovable of another provided the *emphyteutic* lessee does not aggravate its quality, does not undertake to build construction works, to plant perennial plants and perform other works thereon that durably increase its value both of the land used or any other immovable thing except upon the permission of the owner of the land;
- May be established for a fixed or an indefinite period; the term of *emphyteusis* may not be less than ten years;
- Is established by agreement between the owner of an immovable thing and the *emphyteutic* lessee or by will;
- Remains due despite the fact that the owner or the *emphyteutic* lessee changes;
- The *emphyteutic* lessee is bound to preserve and repair the immovable at his own expense.

RIGHTS AFFECTING OWNERSHIP

→ Easement (*servitude*)

- Is a right in respect of an immovable thing of another that is granted for the use of that thing (the servient thing) or a restriction of the right of the owner of that thing in order to ensure a proper utilisation of the thing in favour of which the servitude is established (the dominant thing);
- Remains due despite the fact that subject of the right of ownership of the servient or dominant thing changed;
- May be established by laws, transactions and by a court judgement while in cases stipulated by laws - by an administrative act;
- Rights granted by servitude shall be exercised in accordance to their intended destination in order to cause the least inconvenience to the owner of the servient thing.

→ Usufruct

- Is the right (the right of the usufructuary) of use and enjoyment, granted for a period of a person's life or for a certain period that may not be longer than a lifetime of a person, of a thing of another and of its fruits, products and revenues;
- May be established by laws, court judgements - in the cases prescribed by laws, and by transactions;
- Remains due despite the fact that the owner of the thing in respect of which the usufruct was established changed.

→ Mortgage

- Mortgage should be understood as the pledge of an immovable thing to secure the performance of a present or future debt obligation, when the mortgaged thing is not transferred to the creditor;
- The object of a mortgage may be individual immovable things (real property), registered with the Real Estate Register and not withdrawn from the civil turnover that may be submitted for a public forced auction;
- With the transfer of the mortgaged thing for the ownership of another person, the mortgage follows the thing.

→ Pledge

- Pledge should be understood as a pledging of a movable thing or real rights securing the discharge of an existing or future debt obligation when the object of the pledge is transferred to the creditor, a third person or remains with the pledger;
- Pursuant to the pledge, the creditor (the pledgee) has the right to satisfy his claim from the value of the collateral prior to other creditors, if the debtor fails to discharge the obligation secured by the pledge (in the event of default).

ACQUISITION PROCESS: KEY STAGES

The real estate market in the Republic of Lithuania is regulated following generally accepted principles of ownership immunity, protection of rights of a bona fide acquirer, equality of the parties and publicity.

The land (with an exception of agricultural land¹) may be sold to foreign investors that meet the criteria of European and Trans-Atlantic integration².

Foreign investors have equal rights with Lithuanian counterparts to acquire structures in the Republic of Lithuania

The acquisition of real property must be, executing an asset deal, at all times concluded pursuant to the rules of Civil Code; certified by a notary public and post-signing registered with Real Estate Register.

→ Negotiations

- The non-disclosure agreement is proposed by the one of the parties in order to protect information on the further transaction and to allow access to the property, information and documentation;
- The potential purchaser issues a letter of intent or the parties agree on heads of terms which usually are indicative, though may contain binding provisions on non-disclosure or exclusivity period;
- The due diligence usually is carried out within the exclusivity period prior signing a preliminary or main agreement.

→ Preliminary agreements

- The parties may choose to not to conclude a preliminary agreement and sign main agreement with (or without) postponement condition; however it is less common and more difficult to follow through;
- Preliminary agreement is an agreement between the parties to conclude a main agreement in the future if all conditions preceding are fulfilled;
- Preliminary agreements are necessary to contain: (i) arrangement of the parties to conclude main agreement in the future; (ii) provisions specifying the property and conditions preceding; (iii) term or condition to conclude main agreement;
- Preliminary agreement must be concluded in written form;

- Preliminary agreement is binding the parties and the liability for the breach of pre-contractual obligations is set by the Civil Code.

→ Main agreement and Transfer-acceptance

- Upon fulfilment of all conditions precedent the parties sign the main agreement;
- Notwithstanding the preliminary agreement, parties may mutually agree on different provisions in the main agreement than those specified in the preliminary agreement;
- Main agreement must contain provisions: (i) specification of the real property (address, unique number, etc.); (ii) purchase price; (iii) scope of rights passed to the buyer;
- Whilst acquiring structures, if there is, the certificate of energy efficiency should be presented to the buyer;
- All real property agreements on title transfer must be certified by notary public and registered with Real Estate Register;
- The passing of the title is executed by signing transfer-acceptance deed. The title of property may be passed with the main agreement if parties explicitly agree on it in the main agreement; however the common practice is to sign the transfer-acceptance deed as a separate document after partial or full payment of the price;
- Civil Code grants a seller's warranty for defects that could have not been reasonably seen during the inspection of the property.

COMMERCIAL LEASES

Civil Code does not provide specific regulation on commercial leases; the general rules of lease are applied;

The law sets these requirements for the lease agreement: (i) leased property and its purpose of use must be specified (ii) lease term must be specified and shall not be longer than 100 years (if the term is not specified, the lease agreement will be viewed as concluded for indefinite term) (iii) lease agreement must be in written form if lease term is longer than 1 year.

→ Validity and termination of lease

- Lease agreements may be concluded for a fixed or indefinite term;
- The fix-term leases are more common whereas pursuant to the Civil Code the indefinite term lease agreement may be terminated at any time after submitting the other party with a warning 3 months prior the termination date (the lease agreement may provide longer terms of warning);
- The lease term starts upon concluding a transfer-acceptance deed of the leased property and continues throughout the validity of lease agreement, unless the parties agree otherwise;
- The lease term is automatically prolonged if within the lease term the tenant cannot use the leased property due to capital construction works of property;
- If 10 days after the termination date of the lease agreement the tenant continues to use the leased property and the landlord does not pursue to evict the tenant the lease agreement

transforms to indefinite;

- If throughout the lease term the lease agreement was not breached by the tenant, the tenant preserve "first hand" right to continue to lease the property;
- If the title of the leased property is transferred to the third party, the acquirer of the property can choose to terminate the lease, unless the lease agreement is registered with the Real Estate Register;
- Prior termination date the landlord may terminate the lease agreement if: (i) the tenant damages the property or uses it contrary to its purpose; (ii) the tenant fails to pay the rent fee; (iii) the tenant does not maintain the property if undertook so; (iv) there are other grounds specified in the lease agreement;
- Prior termination date the tenant may terminate the lease agreement if: (i) the landlord does not maintain the property if undertook so; (ii) the property without fault of the tenant becomes impossible to use; (iii) the landlord does not transfer the property or hinder the proper use of the property; (iv) there are other grounds specified in the lease agreement.

→ Rent fee and indexation

- Rent is usually paid monthly and does not include any utilities or costs of other energy resources paid by the tenant;
- The Civil Code allows the parties to agree on any means of rent payment and calculation, i.e. fixed fee, periodical fee, services, improvement of quality of the leased property, etc.;
- If the rent fee or its calculation is not set in the lease agreement, the parties may turn to the court to appoint independent experts to calculate the rent fee;
- Generally, the parties agree on annual adjustment of rent fee based on Customer Price Index released by the Department of Statistics of the Republic of Lithuania. Other common practice is to agree on annual change of the rent fee on mutual agreement. Pursuant to the Civil Code, the rent fee cannot be adjusted for more than twice a year.

TAX

From the 1st January 2013, Lithuania imposed a new taxation on certain real estate properties, deemed Real Estate Tax (RET).

The annual rate of the real estate tax is set annually by the local municipalities and ranges between 0.3% - 3% of the real estates' taxable value.

Residential properties with a gross value in excess of LTL 1,000,000 (EUR €290,000) are now subject to 1% RET, however properties with a total family-wise-ownership value below this threshold are exempted.

→ Direct acquisition of a property

- The acquisition of a property gives rise to either personal income tax or value added tax (VAT).
- If the property is acquired by legal entities:
 - 15% personal income tax, and
 - 21% VAT must be paid.
- If the property is acquired by private individual:
 - Personal income tax is not payable if the property is maintained for more than 5 years (if not - 15% income tax must be paid);
 - If the transaction is an individual, VAT is not applicable;

If a private individual is engaged in this kind of economic activity - 21% VAT must be paid.

- In addition, typical property transfer fee to notary public is around 0.45% of the purchase price; however, the cap of maximum fee is LTL 20,000.

→ Acquisition of shares in a company holding a property

- If company's shares are transferred by legal entity:
 - Personal income tax is not payable if the company's shares current vendor is maintained for at least 2 years;
 - VAT for transfer of shares is not applicable.
- If company's shares are transferred by private individual:
 - 15% personal income tax from earned incomes is applicable;
 - VAT is not applicable.

¹Restriction is applicable until 30 April 2014.

²Foreign legal persons and other foreign organisations that have been set up in one of these states: (i) the European Union member states; (ii) states parties to the Europe (Association) Agreement concluded with the European Communities and their member states; (iii) Member states of the Organisation for Economic Co-operation and Development (OECD), North Atlantic Treaty Organisation (NATO) and states parties to the European Economic Area Agreement.

LUXEMBOURG



In terms of stock, Luxembourg is relatively small, and this is reflected in the level of activity, with volumes averaging less than EUR1bn per annum over the last ten years. Its location in the heart of Europe and its core sectors of activity does attract investors from across Europe, mainly from Belgium, France and Germany. As a result the country has benefitted from above average levels of liquidity.

Private investors, unlisted funds, notably German funds, and institutions are the most active players in the Luxembourg market. Very little is traded or owned by listed companies. Furthermore, investors from the Middle-East and Asia are increasingly visible. Four of the most important Chinese banks have now established operations in Luxembourg.

Offices represent the most sought-after asset class, accounting for more than 79% of the total investment volume in 2013, in line with the long run average. Benefiting from dynamic letting activity and with important projects in the pipeline, this asset class should continue to attract investments, both in small and large volumes. Some mixed-use projects are currently under development and could offer alternative investment strategies as the competition for core office assets is increasing. Retail and industrial/ logistics space does trade, though volumes are typically lower.

Debt is readily available from traditional banks and German Pfandbriefe banks. We do not see any real institutional activity at present.

Market sizing

	Luxembourg	Europe
Invested stock* (Total stock)	EUR 12bn (EUR 25bn)	EUR 3,380bn (EUR 8,150bn)
Liquidity ratio* (10y average)	3.5% (7.0%)	4.0% (4.5%)
2013 volumes (10y average)	EUR 0.3bn (EUR 0.9bn)	EUR 139bn (EUR 135bn)

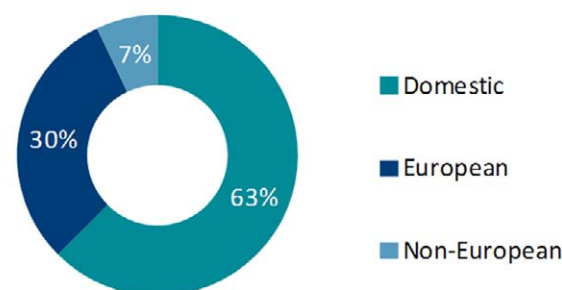
* 2012 figures

Market pricing - Luxembourg (Q4 2013)

	Office	Retail	Industrial
Current Yield	5.75%	5.25%	8.50%
Min/Max (10y)	5.20-6.80%	5.25-6.00%	7.50-9.50%
Yield definition	Net initial yield		

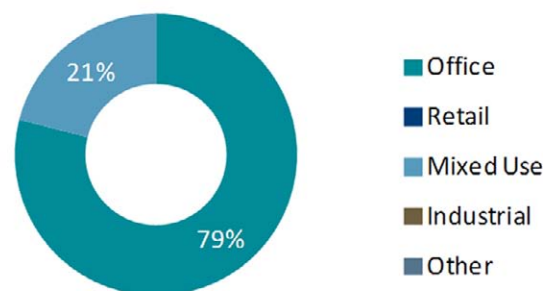
Source : DTZ Research

Investment activity by source of capital, 2013



Source : DTZ Research

Investment activity by asset type, 2013



Source : DTZ Research

PROPERTY LAW

TYPES OF RIGHT OVER REAL ESTATE

→ Freehold ownership

Ownership right

- Freehold ownership (*droit de propriété*) is defined by the Luxembourg Civil Code as the right to enjoy and dispose of assets in the most absolute manner, subject to overriding legal provisions or third party rights.
- Ownership of real estate includes the ownership of the land and any buildings erected on it. Both are registered on the same title.
- Although private agreements will be binding upon the parties, any transfer of ownership will require a notarial deed to be enforceable against third parties.
- All transfers of ownership shall also be subject to a registration (*transcription*) before the registrar of mortgages (*Bureau de la Conservation des Hypothèques*). The land surveying administration (*Administration du Cadastre et de la Topographie*) also lists all parcels and buildings covering the territory of the Grand Duchy of Luxembourg.

Co-ownership and division of a building

- The Law of 16 May 1975 regulates the co-ownership of buildings (*copropriété des immeubles bâtis*).
- The co-ownership of buildings includes a freehold ownership of the privately owned areas (*parties privatives*) and a co-ownership of the common areas (*parties communes*) of the building. The division shall be carried out through a "cadastre vertical" approved by the land surveying administration (*Administration du Cadastre et de la Topographie*).
- The management of the building and obligations of the co-owners are provided in the rules of the co-ownership (*règlement de copropriété*).
- The appointment of a representative of the co-owners (*syndic de copropriété*) is required.

→ Long term lease (*droit d'emphytéose*)

- Long term leases are rights in rem whose beneficiaries enjoy all rights which an owner would enjoy (including the right to assign and mortgage the property).
- The beneficiary is not entitled to depreciate the value of the property (and is usually required to make improvements thereto).
- The minimum term is 27 years and the maximum term is 99 years.
- The beneficiary will pay a rent, as well as taxes and other costs.
- Long term leases must be notarized and registered in the land registry before the registrar of mortgages (*Bureau de la Conservation des Hypothèques*).

→ Building right (*droit de superficie*)

- A building right is a right over a land entitling its beneficiary to construct and own a building on such land.
- The maximum term is 99 years.
- The beneficiary will pay taxes and other costs on the land.

- Buildings rights must be notarized and registered before the registrar of mortgages (*Bureau de la Conservation des Hypothèques*).

→ Rights in rem affecting ownership

Easement (*servitude*)

- An easement is a encumbrance imposed upon a property, for the use and enjoyment of another property belonging to another owner.
- Easements are created naturally, by law or by contract. The latter must be notarized and registered before the registrar of mortgages (*Bureau de la Conservation des Hypothèques*).

Usufruct (*usufruit*)

- The usufruct of a property is a right to the use and enjoyment of the fruits or profits of another's property.
- Usufructs are statutory or contractual. Contractual usufructs are notarized and registered before the registrar of mortgages (*Bureau de la Conservation des Hypothèques*).

Mortgage (*hypothèque*)

- A mortgage is a security encumbering the asset, which entitles the beneficiary to a preferential right over other creditors in the event of a forced sale of the concerned property.
- The mortgage will follow the property irrespective whose hands it is in. The creditor benefiting from the mortgage will acquire a right of pursuit and a right of preference.
- Mortgages can be established by law (statutory mortgage), by court order (judicial mortgage) or by agreement (contractual mortgage). contractual mortgages are notarized. To be enforceable towards third parties, the notarial deed shall be registered before the registrar of mortgages (*Bureau de la Conservation des Hypothèques*).

→ Pre-emption right

- The pre-emption right is the statutory option provided to certain public authorities to substitute an acquirer in a real estate transfer for purposes of general public interest.
- It prevails over any rights of pre-emption which may be held by private persons.

ACQUISITION PROCESS: KEY STAGES

No prior authorisation is required from foreign investors wishing to enter into real estate transactions in the Grand Duchy of Luxembourg.

→ Asset deal vs. share deal

- Many acquisitions are carried out through share deals. Legally, the owner will remain the same and no registration duty will be due.

→ Negotiations

- The transaction will usually start with negotiations under the terms of a confidentiality agreement in order to allow access to various information and documentation related to the property.
- The negotiations will generally lead to the signature of a letter of intent (indicative or binding and exclusive or not).
- The buyer will then usually carry out due diligence in order to assess the risks attached to the acquisition.
- The due diligence will usually cover the following aspects: legal (including corporate file, ownership title, rights affecting ownership and guarantees), administrative, tax, environmental, technical and financial.

→ Share deal

- In a share deal (instead of a direct acquisition of real estate), the company holding the real estate will be acquired through an agreement on the sale of the shares.

→ Asset deal

- In an initial phase, the parties enter into an unilateral undertaking to sell or, most often a preliminary agreement (*compromis de vente*). Such agreement will bind the purchaser and the seller and the ownership transfer will be valid between them. However, such private agreement will not be enforceable against third parties.
- Preliminary agreements usually contain specific conditions precedent (e.g. obtaining the necessary funding or administrative authorisations).

→ Notarial deed of sale

- Although private deeds are bindings between the parties, acquisition of real estate assets require a deed according to which the ownership of a property is transferred from the seller to the buyer; it is necessarily notarised and is the fulfilment of the preliminary agreement (*compromis de vente*).
- There should be no re-negotiation of the terms and conditions of the sale which have been agreed at the stage of the preliminary agreement.
- The notarial deed shall be registered before the registrar of mortgages (*Bureau de la Conservation des Hypothèques*). The registration.

COMMERCIAL LEASES

Commercial leases relate to premises used for a commercial activity, which will result either from a contract or from the nature of the activity.

Under Luxembourg law, leases are regulated by the provisions of Title VIII, Article 1708 to 1778 of the Luxembourg Civil Code. Although no specific legal framework exists under Luxembourg law for commercial leases, Articles 1762-3 et seq. of the Luxembourg Civil Code are specific to leases of properties intended for the practice of trade.

→ Length of term

- Commercial leases are not regulated as to their duration. In practice, commercial leases are mostly entered into on a 3-6-9 year basis, with a break option for both the tenant and the landlord at the end of the third and sixth year. However, the parties are free to agree on a different duration and mechanism of termination.

→ Rent increases

- Rents are adjustable each year in line with the cost of living index. If the parties cannot agree on the amount of the rent for the renewal period, one or more experts will be designated by the most diligent party or by the president of the civil court where the property is located.

→ Tenant's right to sell or sub-lease

- Unless otherwise provided for in the lease agreement, a tenant has the right to sub-lease or (partially) transfer the lease.
- Most leases restrict this right by requiring the prior approval of the landlord. Luxembourg law does however offer protection under certain circumstances, where businesses (*fonds de commerce*) are transferred, in order to allow the continuity of the business operations as a whole.

→ Right of preferential renewal

- For business protection purposes, Luxembourg law provides for a special procedure for preferential renewal. Such right requires that the tenant has operated a business in the premises for at least 3 years and lasts until the 15th year of the lease.
- Any request for a renewal must be notified at least 6 months prior to the expiry of the lease and the landlord shall make its decision within 3 months from notification.
- Any refusal of the landlord shall be justified by one of the following grounds: serious complaints against the tenant, personal occupation by the landlord, no further rental activity, transformation of the premises or a higher firm offer from a third party (with a preferential right for the tenant if it agrees to pay the higher rent).

→ Repairs

- Repairs incumbent upon the tenant relate, inter alia, to utilities, such as water, electricity, gas and fuel oil, minor maintenance repairs (light bulbs, etc.), regular inspection of heater, maintenance of joints and sanitary installations. As for the landlord, it is responsible for major repairs (e.g. roof, ceiling, boiler).

TAX

→ Direct acquisition of a property

- The acquisition of a property located in Luxembourg - or related rights - is subject to registration duties (*droits d'enregistrement*). However, it is in principle exempt from value added tax (VAT).
- Registration duties applicable to properties located in Luxembourg are assessed on the higher of the purchase price and the effective value of the property. In principle, registration duties are levied at a rate of 6%, subject to exceptions in specific cases. In respect of construction sites (i.e. land upon which constructions may be erected under local or municipal

planning rules) the registration duties are assessed only on the land (unless a VAT option at the normal rate has been exercised). The registration duties are payable upon registration of the transfer of the property with the register of mortgages.

- A transcription tax (*droit de transcription*), levied at the rate of 1%, is also due on the notarial deed. For Luxembourg-City, a surcharge of 50% is added to the amount of the registration duties levied by the Luxembourg registry (*Administration de l'Enregistrement et des Domaines*) for the properties transferred other than residential housing.
- In principle, the acquisition of a property located in Luxembourg - or related rights - is exempt from VAT. However, the acquisition of properties that are under construction is subject to VAT on the completed part of the construction at the normal VAT rate. VAT is levied at the standard rate of 15% and assessed, in principle, on the purchase price. The rent of properties is a VAT exempt activity except in case of properties used for commercial purposes, when a joint VAT option has been exercised.
- In addition, notary fees are levied at a proportional rate determined on the basis of the purchase price (with a maximum threshold).

→ Acquisition of shares in a company holding a property

Contribution of a property located in Luxembourg

- The contribution of a property located in Luxembourg to a corporation or a partnership is subject to a reduced registration duty of 0.6% (plus a municipal surcharge of 50%, where applicable) and a reduced transcription duty of 0.5% when such contribution is in exchange for shares.

Companies investing predominantly in real estate (*special purpose vehicles (SPV)*)

- From a tax perspective, the transfer of shares in a company holding a property located in Luxembourg should not impact the ownership of the property. Therefore, no registration or transcription duties should be due.
- The disposal of the shares held in the share capital of an SPV is not subject to any Luxembourg indirect tax (including stamp duty) if such disposal is not recorded in a Luxembourg notarial deed. When a share purchase agreement is submitted to registration voluntarily, a fixed registration duty of EUR 12 will apply.



The Netherlands is the sixth largest market in Europe by stock. The centre of the Dutch economy lies in the Randstad conurbation, which includes the four largest cities of the Netherlands - Amsterdam, Rotterdam, The Hague and Utrecht. More than 50% of the total office stock nationwide (49 million sq m) is in this area. The so called Brabant region in the south of the Netherlands is very relevant for production, manufacturing and logistics.

Amsterdam is the main focus for investors, accounting for an average of 25% of the total investment volumes in the Netherlands over the last ten years. The areas around the large train stations of Amsterdam (Center, Zuidas, Amstel, Zuidoost) and Schiphol Airport are the prime investment areas. Dutch and German investors dominate the prime areas of the Netherlands.

The Netherlands has an active REIT market, with some REITs having expanded their remit outside of the country. Dutch institutional investors dominate the residential and retail markets. Recently there have been signs that foreign investors are entering these markets due to attractive yields in historical and European perspectives.

The Netherlands is attractive for logistics investors, with the largest European seaport Rotterdam, Schiphol Airport and excellent infrastructure leading into Europe. Demand for logistics investments is therefore strong.

As lending by Dutch banks has been restricted recently, as they restructure their balance sheets, opportunities for foreign lenders have emerged. German banks and mezzanine funds are entering the market.

Market sizing

	Netherlands	Europe
Invested stock* (Total stock)	EUR 190bn (EUR 285bn)	EUR 3,380bn (EUR 8,150bn)
Liquidity ratio* (10y average)	2.0% (3.0%)	4.0% (4.5%)
2013 volumes (10y average)	EUR 3.5bn (EUR 5.0bn)	EUR 139bn (EUR 135bn)

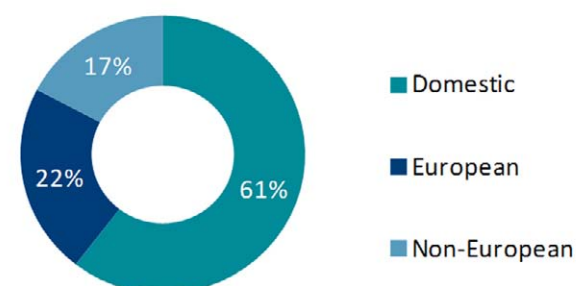
* 2012 figures

Market pricing - Amsterdam/Rotterdam (Q4 2013)

	Office (Amsterdam)	Retail (Amsterdam)	Industrial (Rotterdam)
Current Yield	5.80%	4.20%	7.25%
Min/Max (10y)	5.25-6.75%	4.00-6.10%	7.20-8.20%
Yield definition	Gross initial yield (Gross Rental Income/ Gross Market Value)		

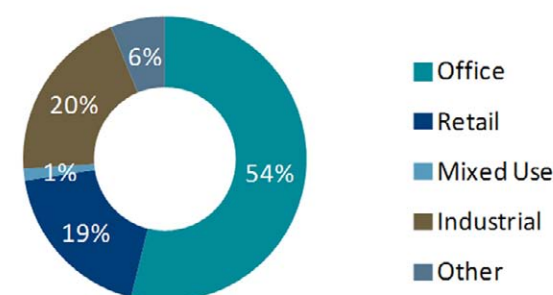
Source : DTZ Research

Investment activity by source of capital, 2013



Source : DTZ Research

Investment activity by asset type, 2013



Source : DTZ Research

PROPERTY LAW

TYPES OF OWNERSHIP

→ Freehold / full ownership (*volle eigendom*)

- The Dutch Civil Code defines ownership as the most comprehensive and complete right a person or legal entity can have in relation to, *inter alia*, real estate. The transfer of ownership requires the execution of a deed in front of a civil-law notary in the Netherlands and the subsequent registration of this deed with the Land Registry (*Kadaster*).
- If a property is owned by more than one person this is referred to as co-ownership or community of property.

→ Apartment rights (*appartementsrechten*)

- The division of property into apartment rights is a specific form of (co-)ownership by various persons of a property or a group of properties. An apartment right entitles the holder thereof to the exclusive use of a certain part of a property and the joint ownership, with the other apartment owners, of that property.
- Division into apartment rights requires the execution of a deed in front of a civil-law notary in the Netherlands and registration thereof with the Land Registry. The deed describes the areas that are designated for exclusive use only and the common areas (such as elevators, roof and foundation of the property). The deed includes the terms of use and the rights and obligations of the apartment owners. Transfer of and use of an apartment right may be limited in the deed. Some urban areas require a property division permit from the municipality. Upon the acquisition of an apartment right the apartment owner becomes a member of the owners association by operation of law. The owners association is responsible for, *inter alia*, maintenance of the common areas.

→ Economic ownership

- Economic ownership is a contractual arrangement and does not constitute a right in rem. Economic ownership is not strictly defined under Dutch contractual law or real estate law. However, for tax purposes economic ownership is defined as, *inter alia*, a combination of contractual rights and obligations pertaining to the property comprising of a contractual interest in such property which interest at least includes some form of risk of depreciation of value of that property.

→ Ground lease (*recht van erfpacht*)

- Ground lease is the right (in rem) to hold and use somebody else's property under the terms and conditions included in the deed of ground lease. A ground lease is established through the execution of a deed in front of a civil-law notary in the Netherlands and the registration thereof with the Land Registry. The terms and conditions included in the deed address the allowed usage, duration of the ground lease, payment of ground lease payments (*erfpachtcanon*), termination etc.

→ Right of superficies (*recht van opstal*)

- A right of superficies is the right (in rem) to own or acquire buildings, works or plants in, on or above the immovable property of another person. A right of superficies is established through the execution of a deed in front of a civil-law

notary in the Netherlands and the registration thereof with the Land Registry. The terms and conditions included in the deed address the allowed usage, duration of the right of superficies, payment of a retribution (*retributie*), termination etc.

RIGHTS AFFECTING OWNERSHIP

→ Easement (*erfdienstbaarheid*)

- An easement is a right (in rem) which encumbers an immovable property in favour of another immovable property for the use and utility of that property. An easement is established through the execution of a deed in front of a civil-law notary in the Netherlands and the registration thereof with the Land Registry. An easement can also come into existence through acquisitive prescription.

→ Mortgage (*hypotheek*)

- A right of mortgage is a right (in rem) which provides security for the due performance of a monetary obligation by the debtor (i.e. the payment of a sum of money) and provides the mortgagee the right to publicly sell the mortgaged property in case of a default in the secured obligations. A right of mortgage provides for a preferential right over other creditors in the event of bankruptcy or forced sale of the relevant property. A right of mortgage is created through the execution of a deed in front of a civil-law notary and the registration thereof with the Land Registry.

→ An obligation attached to a certain capacity (*kwalitatieve verplichting*)

- An obligation (pertaining to the ownership of property) to refrain from certain acts in relation to a certain property and/or allow a third party to perform certain acts with respect to that property can be laid down in a deed executed in front of a civil-law notary which is registered with the Land Registry. Subsequent owners must adhere to these obligations / respect such third party rights.

→ Municipality preferential right (*voorkeursrecht Gemeente*)

- A Municipality may designate a certain area as a so-called preferential right's zone. Any property located in such zone must be offered for sale to the Municipality first before it can be transferred to a third party. A transfer without the approval of the Municipality is null and void.

ACQUISITION PROCESS: KEY STAGES

Foreign investors wishing to carry out real estate transactions in principle do not need any prior authorisation. Prior to or during due diligence and/or negotiations it should be considered whether the transaction should be executed as a share deal or an asset deal (also see below under Tax).

→ Negotiations

- An investment memorandum may be prepared by the seller/agent providing some general details on the property. As a preliminary step, a non-disclosure agreement is then often proposed by the seller/agent in order to allow access to the property and further information and documentation. The would-be purchaser may issue a letter of intent which may include certain preliminary terms and conditions as well as an exclusivity period. The letter of intent and non-disclosure agreement may be combined in one and the same document. Discussions are usually pursued on the basis of this letter of intent providing for an exclusivity period during which the due diligence exercise is carried out.
- The concept of pre-contractual good faith should be considered entering into negotiations.

→ Sale and Purchase Agreement

- Contains terms and conditions for the sale and purchase (e.g. price, warranties, guarantees and limitation of liability). The actual transfer, however, is not effectuated until a Deed of Transfer is executed and registered with the Land Registry (see below). This deed will only be executed after all conditions for the transfer of ownership included in the Sale and Purchase Agreement have been waived or are fulfilled.

→ Deed of transfer

- The deed that will be registered with the Land Registry pursuant to which the ownership of the property is transferred from the seller to the buyer. The Deed of Transfer is executed in the Dutch language in front of a civil-law notary in the Netherlands. The civil-law notary is responsible for registering the deed with the Land Registry. A Dutch civil-law notary is a qualified lawyer (often associated with a law firm) and usually also involved with the drafting of the Sale and Purchase Agreement (which agreement may be drafted in e.g. German, English or any other language).

→ Combined sales and building contract (*koop-aanneemovereenkomst*)

- Used for selling buildings that have not yet been constructed. The seller is committed to erect the property in accordance with agreed specifications, price and deadline; the seller provides the purchaser with completion and defects guarantees. The purchaser pays the purchase price gradually along the construction steps until completion.

COMMERCIAL LEASES

TYPES OF COMMERCIAL LEASES

Generally speaking, leases of buildings used for commercial purposes can be divided into (i) **Commercial retail premises** (e.g. stores, restaurants, hotels, cafés, take-away services); or (ii) **Other**

commercial premises (e.g. offices, industrial sites and warehouses). The applicable category is determined by the intended primary use of the property. Lease agreements for commercial retail property are subject to semi-mandatory provisions, which offer the tenant a considerable degree of legal protection regarding – amongst other things – the duration and termination of the lease and the rent level. For the category ‘other commercial property’ there are no mandatory minimum terms, no mandatory notice periods and no rent regulations. However, there are certain mandatory provisions relating to eviction protection (*ontruimingsbescherming*) at the end of the lease term.

Commercial retail premises

- The statutory provisions are intended to provide a certain extent of security of tenure for two terms of five years. When the tenant gives notice of termination of the lease at the expiry date of a lease period, the lease will end automatically. However, if the landlord gives notice of termination, the lease will continue until the competent court has terminated the lease (unless of course the tenant agrees to termination). There are limited statutory grounds for the landlord for terminating the lease. The notification period must be at least one year.
- The tenant who wants to sell and transfer its business will have to seek permission of the landlord to also transfer the lease. If the landlord does not grant permission, the tenant can ask the court to make the purchaser of its commercial business the new tenant. The court can only grant permission (i) if the tenant has a serious interest by selling its commercial business, and (ii) if the prospective tenant does offer sufficient security for the fulfillment of its obligations under the lease.
- If the current rent does not correspond with the rent of comparable leased properties in the area, the tenant and/or the landlord may periodically request the court to determine the rent. Such a request may be made at the end of a lease term, or every five years. A market rent review may also lead to a lower rent.
- The parties to a lease agreement for commercial retail premises may ask the court to approve contractual provisions that deviate from the abovementioned mandatory provisions. Deviations that are not approved by the court are subject to annulment by the tenant.

Other commercial premises

- No mandatory minimum terms, no mandatory notice periods, no rent regulations, no assignment of lease regulations. This category of leases terminate by expiry of the agreed term or, if no term has been agreed, by termination by one of the parties. In order to oblige the tenant to vacate the leased property, the landlord must give a notice of eviction. The obligation to evict is subsequently suspended for two months by law as of the date of eviction stated in the notice of eviction. A tenant is not entitled to a suspension of eviction if the tenant has given notice of termination of its own accord, or if the tenant has expressly agreed to termination. Within the abovementioned two month period, the tenant may request the courts to extend the suspension term. The court can extend the suspension term to a period of one year, and the tenant may repeat this request for extensions of the suspension term two more times. A request for extension of the suspension term is judged by weighing of interest.

TAX

→ Direct acquisition of property, RETT (*overdrachtsbelasting*) and VAT (*BTW*)

- The acquisition of property (including the acquisition of limited real rights and economic ownership) gives rise to real estate transaction tax (RETT), subject to certain exceptions being applicable. RETT is levied from the purchaser and assessed on the purchase price or the market value of the property, whichever is higher. RETT is, levied at the rate of 6% (or 2% in case of residential property). Under certain conditions previous paid RETT may be deducted from the RETT due upon the acquisition of the relevant property. RETT due must be transferred into the bank account of the civil-law notary who is instructed to execute the Deed of Transfer prior to the execution of the Deed of Transfer.
- VAT is levied if the property concerns land which can be considered a building plot for VAT purposes or if it concerns property which, in short, is under construction or newly developed (and certain other conditions have been met). VAT is then due by operation of law and at a rate of 21%. Provided certain conditions are met the purchaser should be able to rely on an exemption for RETT. If VAT is not due by operation of law parties may be able to opt for a VAT-able transaction (interaction with RETT should be considered).

→ Acquisition of shares in a real estate company

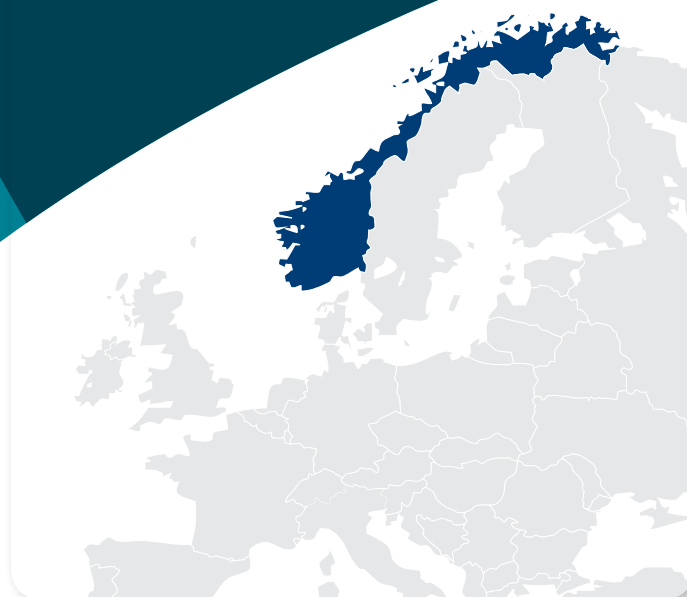
- If the acquirer (together with certain related parties) has or will obtain a substantial interest in a real estate company, the transfer of shares in such real estate company may also be subject to RETT. One is deemed to hold or obtain a substantial interest if (i) in case of a legal entity, one holds or acquires an interest of 1/3 or more in the real estate company; or (ii) in case of an individual, one holds or acquires an interest of more than 7% in the real estate company. A legal entity of which the assets mainly consist of property, and of which property at least 30% is located in the Netherlands may (subject to certain other conditions being met) constitute a real estate company for RETT purposes.

→ Acquisition of economic ownership (*partnership interest*)

- The acquisition of economic ownership of property is also subject to RETT. The acquisition of an interest in e.g. a limited partnership or other entity may be deemed to constitute the acquisition of economic ownership of property and may be taxed as such. An exemption may apply in respect of the acquisition of an interest in a real estate investment fund or mutual fund as defined in the Act on Financial Supervision (*Wet Financiële toezicht*): i.e. if the acquirer does not already hold and will not obtain a substantial interest in that fund the acquisition of an economic interest should not be subject to RETT.

→ Asset deal vs. share deal

- Acquisition of the shares in a real estate company may generate tax savings in terms of RETT but it may also have other tax consequences (e.g. CIT, VAT, tax liability should be considered) which should be considered.



Norway is a relatively small commercial real estate market by size compared to larger countries across Europe, although it is the second largest market by stock in the Nordics behind Sweden.

Despite its size it does benefit from relatively high levels of liquidity, although the majority of investment is domestically sourced. Over the last ten years over 80% of investors has been Norwegian, rising to over 90% in a number of years. This reflects the ease with which domestic investors are able to trade with fellow investors. It is therefore hard for overseas capital to be invested, except through a fund which has a presence in the country or region.

Current invested stock and transactional activity is dominated by private property companies. Institutions and pension funds as well as listed companies are also active in the market. Due to high growth in real estate since 1992, with the exception of a few dips, Norwegians have preferred to invest in property instead of other types of investments. During 2013 we saw growing interest from international investors looking to invest in Norway, mainly in the Oslo CBD area. However foreign investors still account for only a small portion of activity. Debt funding is relatively easy to secure from domestic and Scandinavian banks operating in Norway as the market is seen as stable.

Market sizing

	Norway	Europe
Invested stock* (Total stock)	EUR 85bn (EUR 180bn)	EUR 3,380bn (EUR 8,150bn)
Liquidity ratio* (10y average)	6.0% (5.5%)	4.0% (4.5%)
2013 volumes (10y average)	EUR 5.0bn (EUR 3.5bn)	EUR 139bn (EUR 135bn)

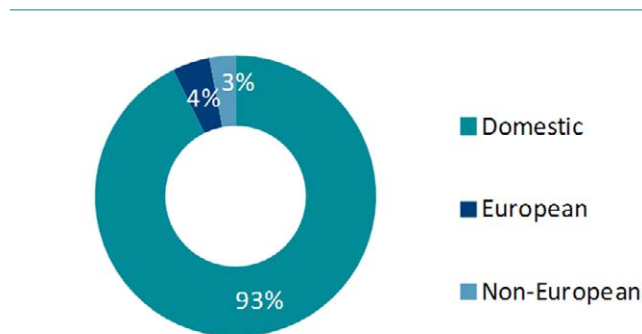
* 2012 figures

Market pricing - Oslo (Q4 2013)

	Office	Retail	Industrial
Current Yield	5.25%	5.25%	6.75%
Min/Max (10y)	4.75-6.75%	5.00-7.25%	6.00-9.00%
Yield definition	Net initial yield		

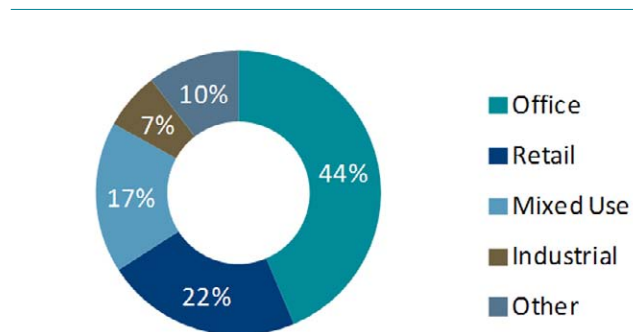
Source : DTZ Research

Investment activity by source of capital, 2013



Source : DTZ Research

Investment activity by asset type, 2013



Source : DTZ Research

PROPERTY LAW

TYPES OF OWNERSHIP

→ Freehold

Ownership

- Norwegian law traditionally defines ownership as the all-including factual and legal right to dispose over an asset, e.g. a real property.
- Any title, transfer or charge of a right to a real property must be registered in the Norwegian Land Register (*grunnboken*) in order to obtain legal protection against *bona fide* third party interests. The Land Register is a nationwide register administered by the Norwegian Mapping Authority.

Co-ownership

- Defined by law.
- Ownership where two or more persons jointly own something together, e.g. a real property, in such a way that their rights are divided proportionally or by fractions.

Commonhold units

- Defined by law.
- Ownership by one or more persons to a co-ownership share in a in developed property with an associated sole right to the use of one of several dwellings or commercial units in the property (*eierseksjonssameie*).
- Consists of:
 - privately owned areas (*eierseksjoner*);
 - common area (*fellesareal*).
- Established through a municipal sectioning decision after a prior application, which shall include a definition of the property units, the purpose of each property unit (i.e. residential or commercial), the section number and ownership proportion of each property unit.
- All co-ownerships must have bylaws.
- Each co-owner has a right to use the common areas and shares the related service charges in accordance with the ownership proportion of each property unit.

→ Leasehold

Lease of real property (*tomteleie*)

- Lease of land without an intention to build anything on the leased land is not statutory regulated in Norway.

Long-term ground lease (*feste*)

- Governed by the Norwegian Land Lease Act of 1996, which sets out background law that will complement any matters not regulated by a leasehold agreement.
- It regards lease of land to a lessee that already has or will construct buildings on the leased land. As a main rule, the lessee has the same right as the lessor to dispose over the leased land, unless otherwise agreed in the leasehold agreement.
- The leasehold agreement must be in writing. A leasehold agreement regarding real property which is for commercial

purposes will last for 80 years, unless otherwise stated in the leasehold agreement.

- Each party may, every 10 years, require the leasehold consideration to be adjusted in accordance with the Norwegian Consumer Price Index, unless otherwise agreed in the leasehold agreement. There is a general ban on unreasonably high leasehold rent, although in commercial leases the level of what would be considered unreasonably is high.
- The right to lease may be mortgaged and transferred unless otherwise agreed in the leasehold agreement.
- To ensure that it is enforceable against third parties, the lease must obtain legal protection by registration in the Norwegian Land Registry.

RIGHTS AFFECTING OWNERSHIP

→ Public approval (*konsesjon*)

- According to the Norwegian Concession Act of 2003, any purchase of real estate in Norway is subject to public approval.
- An important exception, however, is that developed properties under 100,000 sq.m. of which any agricultural land area does not exceed 20,000 sq.m., are not subject to concession, provided that the transaction does not require an alteration of the area's zoning status. For undeveloped properties there is no such threshold.
- The Concession Act of 2003 is drawn up, construed and applied in accordance with the EEA-agreement article 40. Thus, the authorities are not entitled to treat companies resident in other EU Member States less favourably than Norwegian entities.
- The main objective of the Act is to protect agricultural areas and interests, and normally approval is granted to a purchaser of commercial real estate.
- Concession also applies to lease agreements and leaseholds of more than 10 years. The size exemptions outlined above also applies to lease agreements.

→ Easement (*servitutt*)

- Is a burden imposed upon a real property, for the use and utility of another real property belonging to another owner, without the beneficiary holder of the easement having the possession of the encumbered real property.
- Are divided into the right to use or otherwise dispose over (positive easements) and the obligation to refrain from use of or otherwise dispose over (negative easements) a real property.
- An easement may be due to the holder at any time (real easements) and thus may only be transferred together with the encumbered real property. Other easements (personal easements) may, as a main rule, be freely transferred, however the property owner has a pre-emptive right unless the easement is transferred to an individual closely related to the holder.
- The owner and holder may not exercise their respective rights in a manner that is to the unreasonable or unnecessary disadvantage to the other.

→ Mortgage (*pant*)

- Is a security encumbering the asset, which entitles the beneficiary to a preferential right over other creditors in the event of a forced sale of the relevant asset.

- Any security interest over real property must be in accordance with the provisions of the Norwegian Mortgage Act of 1980 in order to obtain legal protection and to be enforceable. This requires i.a. a written mortgage agreement identifying the amount to be secured.
- Most rights to a real property in Norway may be mortgaged and there is no limit on the number of mortgages that may be created over the same right to a property (e.g. ownership, lease, land lease etc.).
- As a main rule a mortgage obtains priority on a first-registered best-priority principle, but it is possible to register a mortgage with a higher priority than previously registered mortgages (consent required).

→ Pre-emption right (*forkjøpsrett*)

- Is the statutory option provided to certain public authorities and private parties to substitute the acquirer of a real property. Also, municipal authorities sometimes condition easements with pre-emption rights in favour of the municipality.
- The most practical examples is the municipal pre-emption right regarding apartment buildings (i.e. more than half of the floor space is furnished for habitation and contains at least five dwellings), the pre-emption right for members of housing co-operatives upon the sale of a coop share and the pre-emption right for the lessee of a commonhold unit.

ACQUISITION PROCESS: KEY STAGES

Foreign investors wishing to carry out real estate transactions do not need any prior authorisation.

→ Negotiations

- A Norwegian real property transaction will often start with the exchange of a written offer and bid, normally made on the basis of information provided in a prospectus made by a commercial real estate agent. A tendency we are seeing more frequently is that the parties sometimes recapitulate the most important terms and conditions in the form of a term sheet (or similar as regards content).
- Following the bidding process, further negotiations and clarifications between the parties lead to the signing of the sales and purchase agreement. Most transactions are subject to a satisfactory due diligence review of the target property (and company), as well as financing satisfactory to the buyer.
- Foreign investors should be aware of the fact that under Norwegian law, a legally binding agreement can be made verbally, without a signed sales and purchase agreement. It has been established through case law that a legally binding agreement may have been established if the parties have agreed on material matters such as identifying the property in question, the purchase price and the takeover date even if no contract in writing has been made or entered into. This would normally constitute a binding agreement, unless otherwise specifically agreed.

- As a result of this, commercial parties usually agree that negotiations are subject to a completely agreed and signed contract.

→ Standard form sale and purchase- and closing agreement

- Commonly recognised standard agreements developed by the (Norwegian) National Federation of House Owners, the Forum for Business Real Estate Agents and the Commercial Property Association are often applied as basis for commercial real property transactions, however they are in most cases customised to reflect the particulars of the individual deal.
- There are well established standard agreements regarding a variety of transfers, such as forwards (uncompleted buildings), share transfer (sale of shares in a single purpose vehicle holding title) and asset transfer (sale of the real property itself). Provided that both parties are professional, they have full freedom of contract without any statutory limitations. The Transfer of Property Act of 1992 serves as non-mandatory background law for commercial transactions, and the provisions of the Act will apply unless otherwise agreed between the parties.
- The standard agreements also include a separate closing agreement, e.g. regulating the payment of the purchase price, the transfer of ownership to the property and A restrictive covenant (curtailing the disposal of land) as well as a mortgage in favour of the real estate agent being responsible for the settlement will normally be registered in order to prevent the vendor from selling or mortgaging the real property to the detriment of the buyer.

→ Deed of transfer

- Is the deed according to which the title to a property is transferred from the seller to the buyer. As a main rule the deed of transfer is only required to be signed duly on behalf of the owner and title holder of the real property, however the signatures are required to be witnessed or duly certified (e.g. by a lawyer). 2.5% stamp duty will apply upon registration (see also below).
- The deed of transfer may be registered in the Norwegian Land Registry by the Norwegian Mapping Authority.

COMMERCIAL LEASES

Lease of accommodation against consideration is governed by the Norwegian Rent Act of 1999, which sets out the background law and, with a few exceptions, is non-mandatory between professional parties. The provisions of the Act apply if the parties have not agreed otherwise. The main focus of the Act is to protect the lessee as the presumed weaker party and as a result the Act is generally lessee-friendly. As such, the lease of buildings used for commercial purposes for all practical matters is subject to freedom of contract without any substantial statutory limitations. Commercial leases in Norway are regularly based on standard form agreements, adapted to fit individual situations. As the standard form agreement both directly and indirectly deviates from and prevails over the non-mandatory regulation of the Norwegian Rent Act, it is generally known to be lessor-friendly.

The right to lease may be registered and mortgaged with the consent of the landlord.

→ Rent adjustment

- Rent is usually adjusted yearly in accordance with 100 % of the change in the Norwegian Consumer Price Index, as published by Statistics Norway (*Statistisk Sentralbyrå*).
- The Norwegian Rent Act of 1999 provides legal basis for requiring adjustment of the rent if such adjustment is not regulated in the lease agreement between the parties.

→ Expiration of the lease term

- According to the Norwegian Rent Act of 1999, a lease agreement is either fixed-term or indefinite.
- A fixed-term lease agreement expires without prior notice upon the end of the agreed lease term. A fixed-term lease agreement becomes indefinite if the lease continues past three months after it has expired.
- The lessee has the right to terminate an indefinite lease agreement with three months prior notice, and there are no requirements as to the form of such notice. The lessor also has the right to terminate an indefinite lease agreement, however there are several limitations and requirements as to the form and procedure of such termination.

→ Energy certification

- All dwellings and commercial buildings (over 1,000 sq.m.) that are sold or leased out are required to have an energy certificate.
- It contains an energy label with the energy standard of the building, consisting of an energy grade (from A (best) to G (worst)), a heating grade with information about the source of the energy, the measured current consumption of energy (required for commercial buildings, voluntary for dwellings), possible measures for improving the building's environmental performance and a summary of the most important information on which the certificate is based upon.
- The Norwegian Water Resources and Energy Directorate may issue fines in the case of absence of an energy certificate. We are not aware of any substantial fines having been issued, however it is likely that such absence will have commercial implications.

TAX

→ Direct acquisition of a property

- As a main rule the registration of title in connection with an acquisition of a real property is subject to the payment of stamp duty (*dokumentavgift*), however the sale of real property is exempt from value added tax (VAT).
- Registration of title is subject to payment of 2.5 per cent stamp duty, the basis for calculation being the fair market price of the property at the time of registration. Registration is not, however, a legal requirement.
- Foreign investors should note that a real property is vulnerable to the creditors of the registered title holder if the transfer of title is not registered at the same time as the acquisition of the property.
- Provided that the title deed is already registered on the target company (normally a single purpose vehicle), a transfer of shares does not trigger stamp duty. Other costs may also accrue in connection with the transaction, such as fees to public

authorities.

- If either of the parties are represented by a real estate agent (normally the seller is), the payment of the agent's fees is subject to agreement between the parties. Normally, the party who has engaged the agent will carry this cost.

→ Asset deal vs. share deal

- Sale and purchase of commercial real estate in Norway has since 2004 normally been organised as a transfer of the shares in a single purpose vehicle owning and holding title to the property, rather than a sale of the property itself.
- The reason is that such indirect sale is normally tax beneficial for the seller (very low capital gains tax), and to a certain extent also for the buyer, as stamp duty is not payable upon transfer of shares. The buyer is normally compensated for a lower depreciation basis due to any difference between the actual market value and the tax value of the property (depending on the classification of the property, as well as the distribution between property construction and technical installations, the compensation normally varies from 7 % to 14 % of the difference).



Poland is the largest and the most mature commercial real estate market in Central and Eastern Europe (CEE), with a high proportion of activity concentrated on the capital, Warsaw. Poland has strong macroeconomic fundamentals and a stable political environment.

Despite being relatively small compared to other major markets it has attracted high levels of overseas investment. Domestic players have held a small market share - 8% of transaction volume over the last 10 years. The strongest activity has been from German, UK, Irish, French and Austrian entities.

Prime office buildings located in the Warsaw CBD and the best shopping centres in major Polish regions, have been the most sought after asset class for the last few years. However, along with the market maturing and economic situation in Europe improving, property buyers have started to consider more opportunistic purchases. Additionally, following the positive development of the industrial market, to a large extent resulting from the growth of online retail, industrial properties are becoming a sought after asset class.

The majority of stock is held by private companies and funds. Listed companies have a relatively small share of total holdings. Institutional investment is limited. These trends are evidenced by recent transactional activity.

Although Poland, as with other CEE markets has seen a relatively weak recovery, we do see signs of improvement. Debt is readily available from both local banks and German Pfandbriefe Banks which have been active lenders. Institutional lending is limited.

Market sizing

	Poland	Europe
Invested stock* (Total stock)	EUR 45bn (EUR 315bn)	EUR 3,380bn (EUR 8,150bn)
Liquidity ratio* (10y average)	7.0% (6.0%)	4.0% (4.5%)
2013 volumes (10y average)	EUR 3.0bn (EUR 2.5bn)	EUR 139bn (EUR 135bn)

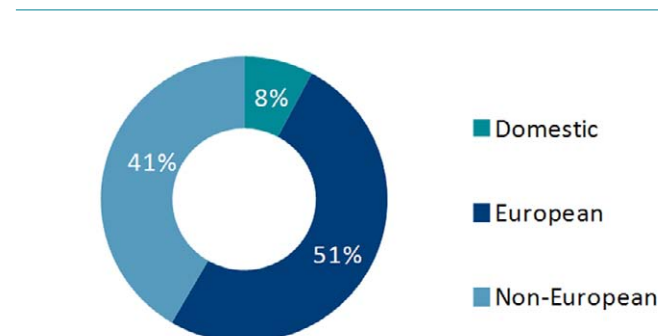
* 2012 figures

Market pricing - Warsaw (Q4 2013)

	Office	Retail	Industrial
Current Yield	6.00%	6.00%	7.75%
Min/Max (10y)	5.25-9.00%	5.50-10.00%	6.50-10.50%
Yield definition	Gross initial yield (Net Rental Income/Net Market value)		

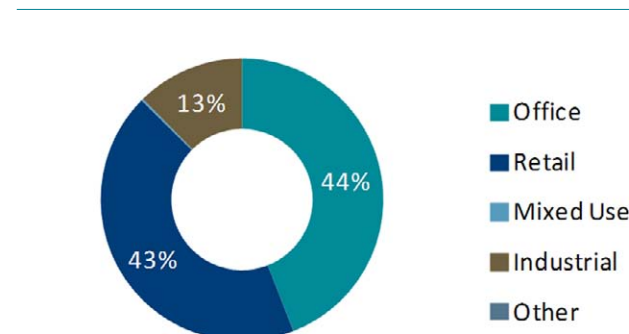
Source : DTZ Research

Investment activity by source of capital, 2013



Source : DTZ Research

Investment activity by asset type, 2013



Source : DTZ Research

PROPERTY LAW

→ Ownership (Freehold)

Ownership

- The Civil Code of 23 April 1964 defines ownership as an exclusive right to use a thing in accordance with its social and economic purpose (in particular to collect profits and other revenues) and to dispose of the thing.
- In principle, the ownership of real estate covers the land and the buildings located on it. In some cases, however, buildings may be subject to separate ownership, and it is also possible to create separate ownership for residential or commercial premises.
- The title to real estate is usually disclosed in land and mortgage registers (*ksiegi wieczyste*) kept by land and mortgage register departments in district courts. The registers also contain some other information about real estate, including easements, mortgages and certain claims or restrictions.

Co-ownership

- Co-ownership is defined by the Civil Code as a situation where two or more persons are entitled indivisibly to the ownership of the same thing (property).
- Co-ownership can be a joint one - based on specific legal relationships e.g. marriage, civil law partnership - or involving fractional parts. The former is closely connected with the underlying relationship and cannot be cancelled over duration of such relationship. Co-ownership in fractional parts can be cancelled at any time (with some minor exceptions) and before this, each co-owner can freely dispose of his right (fraction).
- In the case of the ownership of separate premises, the owner has at the same time a share in the common areas. Each co-owner has a right to use the common areas and shares the related service charges.

RIGHTS AFFECTING OWNERSHIP

→ Perpetual usufruct

- Perpetual usufruct is a right to real property, where perpetual usufructuary holds the land owned by the State Treasury or local authorities for a certain period (maximum 99 years) against an annual fee. Buildings and other installations constructed on the land are owned by the perpetual usufructuary.

→ Usufruct

- It is a limited right to property enabling the holder to use and collect benefits from the real estate.
- Usufruct is non-transferable.
- Usufruct should be established by notarial deed.

→ Easement

- It is a limited right to property enabling the holder to use encumbered real estate (e.g. with a right of way).
- Easements, as attributes of the ownership right, are transferred by law together with the real estate.
- An easement should be established by notarial deed. Ease-

ments can also be acquired through adverse possession (acquisitive prescription), after the thing has been possessed for a specific period (20 years in good faith and 30 years in bad faith).

→ Mortgage

- A mortgage is a security interest encumbering real estate, which entitles the beneficiary to satisfy his claim with a preference to other creditors.
- In order to validly establish a mortgage, the real property owner/perpetual usufructuary should make an appropriate statement (in most cases in the form of a notarial deed) and the mortgage should then be registered in the appropriate land and mortgage register.

→ Right of first refusal

- It is a statutory option held by certain public authorities or private persons to replace the acquirer in a real estate transfer.
- The right of first refusal is provided for by law mainly to certain public entities because of specific public interests. The right of first refusal may also be established contractually.
- Usually the right of first refusal held by a public entity prevails over the same rights that may be held by private persons.

ACQUISITION PROCESS: KEY STAGES

→ Limitations for foreigners

- In some cases a permit has to be obtained from the Minister of Internal Affairs before a foreigner can purchase real estate or shares in a company that owns real estate. Foreigners from the EEA countries (i.e. EU countries plus Norway, Iceland and Liechtenstein) and Switzerland do not require a permit except when acquiring agricultural or forest real estate (they may, however, acquire shares in Polish companies having ownership title to agricultural or forest real estate without a permit).
- There are no restrictions on foreigners occupying real estate (e.g. under a tenancy or lease agreements).

→ Commercial Negotiations

- Before the parties enter into negotiations they sometimes execute a letter of intent which sets out general conditions of the final contract and the time frame for negotiations. It is also an indication of the parties' intents to execute a contract.

→ Pre-contractual arrangements

- The parties may also enter into a more formal preliminary contract (which should take the form of a notarial deed if one desires to effect acquisition before the court in the case of the other party's refusal) specifying the terms and conditions and the execution date of the final contract.
- The preliminary contract provides in most cases for the buyer's/seller's additional conditions/requirements which should be fulfilled before the final contract is signed, e.g. removing buildings, obtaining some administrative decisions, etc.

→ Pre-contractual arrangements

- Once all the conditions have been met and the parties have agreed on the final version of the contract, they execute a sale contract. It must be done before a notary in the form of a notarial deed which is mandatory for the transfer of real estate.
- The sale contract is legally binding on the parties from the time of its execution.
- The transfer deed is then submitted, usually by a notary, for registration by the local court in the land and mortgage register and also by local authorities in the land register.
- Title to ownership is transferred at the time the final contract is executed. However, where perpetual usufruct is transferred, registration thereof in the land and mortgage register is required for its effectiveness.
- The seller is responsible for the correctness of legal title to the real estate under the Civil Code, based on warranty for physical and legal defects. Nevertheless, it is a common practice for sellers to make representations as to title and other issues. If representations on the legal or physical conditions of the real estate are untrue, the seller may be liable towards the buyer. The seller may also be responsible under certain specific conditions for environmental damages.

→ Development agreement

- It is an agreement used for selling residential apartments that have not been constructed yet. This special act provides the purchaser with certain rights connected, inter alia, with information about the investment and other issues.

COMMERCIAL LEASES

Leases of buildings used for commercial purposes are covered by general rules defined in the Civil Code. The Code provides for a tenancy contract (*najem*) where the tenant is authorised to use the thing (property, premises, etc.) or a lease contract (*dzierzawa*) where the lessee is not only authorised to use the thing but also to collect profits generated by the thing.

Although many issues are freely negotiable (rent level, rent indexation, potential renewal of the tenancy/lease, contract duration – to certain extent – etc.), there are certain restrictions under mandatory regulations that affect contents of tenancy/lease contracts. These restrictions apply mainly to defining the parties' rights and obligations connected with:

- Duration
- There are generally no restrictions on the tenancy/lease term; the term can be either fixed or non-fixed. Nevertheless, in the case of commercial tenancy contracts and all lease contracts, an agreement executed for a period of more than 30 years is deemed, on expiry of the 30-year period, to be executed for a non-fixed term.
- Tenants/lessees do not have a statutory right to renew a tenancy/lease. Under the freedom of contracts principle, however, some provisions in this respect can be incorporated in contracts.

→ Maintaining the subject of tenancy/lease

- Basically, the landlord/lessor has to hand the subject of tenancy/lease over to the tenant/lessee in a condition suitable for the agreed use and maintain it in this condition throughout the tenancy/lease period. However, minor repairs connected with day-to-day use are carried out by the tenant/lessee.

→ Termination rules

- If the tenancy/lease term is non-fixed, it can be terminated by notice; no grounds have to be given to make the notice effective. A fixed term tenancy/lease can be terminated for the reasons specified in the contract (e.g. arrears in tenancy/lease payments, other breaches of major contractual provisions).
- Moreover, there are certain statutory possibilities for the landlord/lessor to terminate a tenancy/lease, which include:
 - the tenant/lessee using the subject of tenancy/lease contrary to its purpose or in a manner contrary to that agreed in the contract,
 - the subject of tenancy/lease is misused in a way leading to the risk of it being lost or damaged,
 - the use of neighbouring premises in the building is made difficult, and
 - arrears in rent payments for at least two full payment periods occur (in the case of tenancy of premises and lease contracts, termination on this basis has to be preceded by additional actions taken by the landlord/lessor).
- The tenant is entitled to terminate the tenancy effective immediately if there are defects in the premises posing a hazard to human health, even if the tenant was aware of the defects when entering into the tenancy agreement. The tenant can also terminate the tenancy if defects which make the agreed use of the tenancy subject impossible are not removed by the landlord when requested to do so, or if they are not removable.

→ Transfer of business or real estate

- In the case of the landlord's/lessor's business being transferred, the purchaser assumes the tenancy/lease. If the real estate is sold, the new landlord/lessor is entitled to terminate the tenancy/lease by notice, unless it is a specific fixed-term tenancy/lease.

TAX

→ Direct acquisition of a property

CIT/PIT

- Income generated from the sale of real estate by corporate income taxpayers is subject to 19% CIT.
- The sale of real estate by individuals within the course of business activities is subject to PIT at 19% or at a progressive rate, depending on the taxation scheme chosen. The sale by an individual not performing business activities is generally subject to 19% PIT. However, after the lapse of 5 years counting from the end of the year in which the property was acquired or built, the sale is PIT exempt.
- The sale price must not differ from the property market value. Otherwise, tax authorities may assess revenues in accordance with the market value.

VAT

- The sale of buildings, infrastructure, or parts of buildings or infrastructure, to the first acquirer or user after their:
 - construction; or
 - significant improvement (increase in the initial value by 30% or more),
- defined as the "first occupation", or the sale accomplished before the lapse of two years from the first occupation is subject to 23% VAT (8% for residential real estate, with certain limitations).
- The sale of buildings, infrastructure, or parts of buildings or infrastructure, accomplished after the lapse of two years from the first occupation is generally VAT exempt. Registered VAT payers are entitled to opt for a charge of VAT if both the buyer and the seller submit appropriate statements to tax authorities before the transaction.
- The sale made before the lapse of two years from the first occupation is also VAT exempt if certain conditions are met, e.g. the seller was not entitled to deduct input VAT with respect to the real estate purchase or construction. There is no option for charging this tax in such case.
- The sale of ownership title to undeveloped land or perpetual usufruct of undeveloped land designated for building purposes is subject to 23% VAT. The sale of ownership title to undeveloped agricultural land or perpetual usufruct of undeveloped agriculture land is VAT exempt.

Civil transactions tax (CTT)

- The sale of real estate which is VAT exempt or not covered by VAT regulations is subject to a civil transactions tax of 2% payable by the buyer within 14 days from the sale.

→ Acquisition of shares in a company holding real estate

CIT/PIT

- The sale of shares in a company holding real estate is subject to personal income tax or corporate income tax at a rate of 19%. Costs incurred to acquire the shares may be recognised as tax deductible costs.
- In accordance with double tax treaties concluded by Poland with certain states, revenues generated from the sale of shares in companies the assets of which comprise mostly real estate located in Poland are subject to taxation in Poland irrespective of the company's registered office or residence of the company's shareholders.

CTT

- The sale of shares in Polish companies is subject to 1% civil transactions tax payable by the buyer within 14 days from the sale.

VAT

- The sale of shares in a company holding real estate falls outside the scope of VAT, unless the seller performs it as a business activity. VAT exemption applies to the sale in the latter case.

ROMANIA



Romania has a great market potential, being 7th in the EU27 in terms of population and 2nd in Central and Eastern Europe (CEE) after Poland. Romania has a strategic geographical location next to the Black Sea, with substantial natural resources and tourism potential.

These trends are also reflected in Romania's invested stock, which is lower than Poland's. The majority of investment activity is centred on the capital, Bucharest.

Romania benefits from European Union membership, which provides easy access to European funds, and infrastructure is growing steadily. Romania benefits from a state of the art IT infrastructure, and it is increasingly becoming an important regional hub for the IT sector, generating demand for office properties.

Most of the stock is held by private individuals and companies, as well as listed property companies. Institutional ownership and activity has been relatively modest so far.

The country has high potential for economic growth due to the underdevelopment of many economic sectors including real estate. The large retailers continue to expand their national chains.

The stock and quality of institutional investment products is gradually improving, with existing properties and new developments meeting the BREEAM or LEED standards.

Market sizing

	Romania	Europe
Invested stock* (Total stock)	EUR 38bn (EUR 105bn)	EUR 3,380bn (EUR 8,150bn)
Liquidity ratio* (10y average)	0.5% (2.5%)	4.0% (4.5%)
2013 volumes (10y average)	EUR 0.2bn (EUR 0.5bn)	EUR 139bn (EUR 135bn)

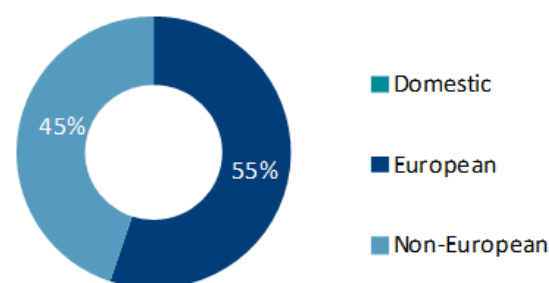
* 2012 figures

Market pricing - Bucharest (Q4 2013)

	Office	Retail	Industrial
Current Yield	8.50%	8.50%	10.50%
Min/Max (10y)	5.60-12.50%	6.50-11.00%	7.50-12.00%
Yield definition	Net initial yield		

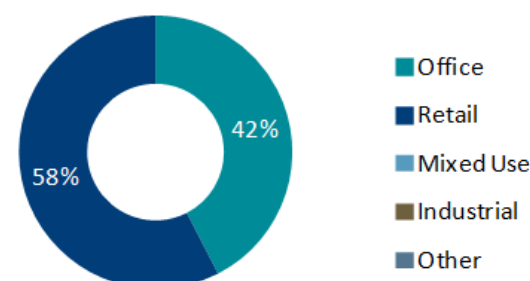
Source : DTZ Research

Investment activity by source of capital, 2013



Source : DTZ Research

Investment activity by asset type, 2013



Source : DTZ Research

PROPERTY LAW

TYPES OF OWNERSHIP

→ Freehold

Ownership

- Romanian Civil Code defines ownership as the right to possess, use and dispose of a property exclusively, in the most absolute and perpetual manner, in the limits described by the law, subject only to a non-prohibited use.
- Any title, transfer or charge on the ownership right must be registered with the local Land Registry (*carte funciară*)

Co-ownership

Co-ownership can be regular co-ownership, forced co-ownership and indivisible co-ownership

- Regular co-ownership** is the ownership by various persons of a property or a group of properties divided into co-ownership units (*cote-părți*). Each co-owner holds a share of the ownership right and may freely dispose of his/her share. The law presumes the co-ownership units to be equal until evidence to the contrary. Each co-owner may act to preserve the entire property or group of properties, without requiring the consent of the others. Use and management of the asset generally requires the consent of the other co-owners, while disposition acts affecting the entire property always require all the co-owners' consent. It has a temporary character, any of the co-owners being able to request the termination of the co-ownership status by partitioning the property.
- Forced co-ownership** is the ownership by which each co-owner may use the property under the condition to observe its designated use and to allow the other co-owners to exercise their right. Its characteristic is that it has a permanent character, the co-owners not being thus able to partition such property.
- Each co-owner has a right to use the common areas and shares the related service charges.
- Indivisible co-ownership** results from legal provisions or legal acts, the ownership right belonging to several persons at the same time, without any of these persons being the owner of a determined ownership unit (*cotă-parte*) of the property.

Time-shared ownership

- Consists of exercising ownership over an asset, successively and repeatedly, at determined time intervals, which need not necessarily be equal, by more different persons. Such time-shared ownership rights must be registered with the Land Registry according to the general applicable rules.

RIGHTS AFFECTING OWNERSHIP

→ Easement (*servitute*)

- Is a burden imposed upon a property, for the use and utility of another property belonging to another owner.
- Is exercised to the detriment of the property assets which they encumber - servient tenement (*fond aservit*) - and to the benefit of adjoining assets which they enhance - dominant tenement (*fond dominant*).
- As an attribute of the right of ownership, easements are transfer-

red with the related tenement.

- While the owner of a dominant tenement may, at its expense, carry out any works required to use or to preserve the easement, it is not entitled to do anything to aggravate the situation of the servient tenement; the owner of the servient tenement must allow the easement to be exercised without doing anything to restrict it.

→ Superficies (*superficie*)

- Is the right to own or to build upon or under another's land buildings, structures or plantations. The beneficiary of the superficies right will have a right of use over the land.
- The superficies right may be acquired through a legal document or usucapio or another way provided by law.
- This right must be registered with the local Land Registry and may have a duration of maximum 99 years, after which it may be prolonged.

→ Usufruct (*uzufuct*)

- Is the right of a person different than the owner to use the property of another person and to obtain its benefits (*fructe*) as the owner would, with the obligation to preserve the substance of the property.
- The usufruct right can be acquired through a legal document or usucapio or another way provided in the law.
- The duration of this right varies as it is constituted in favour of a legal person or an individual. For individuals, the right is presumed to be lifelong, whereas for legal persons it may have duration of maximum 30 years.

→ Use (*uzul*)

- Is the right to use the property of another person and to receive the benefits (*fructe*) both natural and industrial, only for the use of the beneficiary and his/her family (*right intuitu personae*).
- This right cannot be assigned to a third party and the property may not be leased.

→ Mortgage (*ipoteca*)

- Is a security encumbering the asset, which entitles the beneficiary to a preferential right over other creditors in the event of a forced sale of the relevant asset.
- Confers a right to trace (*drept de urmărire*) entitling a secured creditor to take possession of the asset offered as security, even if it is in the possession of a third party.
- Any property in Romania may be mortgaged and there is no limit on the number of mortgages that may be created over the same property.
- In the case of mortgages over immovables, the registration with the Land Registry is mandatory. The rank (and thus the preference order) depends on the order of registration with the Land Registry.

→ Pre-emption right

- Is the statutory option provided to certain public authorities or individuals to substitute an acquirer in a real estate transfer for purposes of general public interest (for public authorities) or personal interest.
- This right is provided by law or, in some particular cases, by agreement between the pre-emptor and the owner.

- This right is granted by the Romanian Civil Code to the lessee of an agricultural lease and to co-owners or neighbours of the owner selling forestry property (the neighbours must also own forestry).

→ Tenants right

- The tenant may oppose to the new owner his/her rights deriving from the lease agreement if the termination of the lease in the case of alienation was not expressly stipulated. Even if it was stipulated, the tenant may oppose his/her rights to the new owner for a term twice as long as the one applicable for the termination of the lease agreement.

ACQUISITION PROCESS: KEY STAGES

Foreign investors wishing to carry out real estate transactions do not need any prior authorisation. Limitations for foreigners.

→ Negotiations

- If a confidential information is communicated during the negotiations the other party is obliged not to disclose it even if the agreement is not concluded.
- The would-be purchaser issues a letter of intent which may be indicative or binding.
- The Romanian Civil Code provides the possibility to initiate, conduct and end negotiations. The parties have the obligation to conduct negotiations in good faith, whereas this obligation may not be contractually or otherwise limited.
- The party who initiates, conducts or ends negotiations contrary to good faith can be held responsible for the prejudice caused to the other party.
- If during the negotiations a party insists on a certain element of the agreement or formal aspects, the agreement will not be concluded until these aspects are agreed upon.
- If the parties have agreed upon the essential elements of the agreement, the secondary elements may be subsequently determined by third parties or by a court of law. However, the Romanian Civil Code does not define the notion of secondary elements of an agreement.

→ Preliminary contracts

- Preliminary sale contracts provide for the terms and conditions of the sale, whereas the final transfer remains subject to the fulfilment of certain conditions.

Put option or unilateral undertaking to sell (*promisiunea de vânzare*)

- Is an agreement by which the promissory-seller irrevocably undertakes to sell the property for a specified price, whereas the beneficiary has the option of purchasing (or not purchasing) such property during the given time period.
- If the beneficiary expresses his/her option to purchase and the

promissory-seller refuses, the beneficiary may request a court of law to issue a decision replacing the notarised agreement by which the ownership is transferred to the beneficiary, if all the validity conditions of the sale were met by the put option. The request in court must be introduced within 6 months from the date when the sale-purchase agreement should have been concluded.

Call option or unilateral undertaking to purchase (*promisiunea de cumpărare*)

- Is the agreement by which the promissory-purchaser undertakes to purchase the property for a specified price, if the owner decides to sell. The owner has no obligations deriving from this agreement, being able to sell to any third party.

Bilateral undertaking to sell (*promisiunea bilaterală de vânzare-cumpărare*)

- Is the reciprocal undertaking of the parties to sell, respectively to purchase the property, where both parties are committed to transfer the property.
- The transfer remains subject only to the fulfilment of validity conditions of the sale-purchase agreement.

Option Agreement (*pact de opțiune*)

- Is the agreement by which a promisor (*promitent/ofertant*) makes an irrevocable offer to conclude in the future a agreement having as object a determined good, offer which the beneficiary is free to accept or refuse in a determined term. The promisor will be obliged to prefer the beneficiary if he decides to sell.
- In this period the promisor may not transfer the property.
- The option agreement must be concluded in the form and with the content requested for the validity of the sale-purchase agreement.
- The sale-purchase agreement will be concluded by statement of acceptance issued in the form necessary for the validity of the sale-purchase agreement.
- If the option agreement concerns tabular rights (*drepturi tabulare*) (ie. rights over immovables) the agreement must be noted in the Land Registry.

→ Sale-purchase agreement

- Is the deed according to which the ownership of a property is transferred from the seller to the purchaser; it is necessarily notarised.
- The terms and conditions of the sale which have been agreed at the stage of the preliminary agreements (if such preliminary agreement existed) should be observed by the parties. However, the parties may commonly agree to amend the terms and conditions of the sale purchase agreement.
- The sale shall be registered with the Land Registry by the notary.
- Warranties (i) for claims over the property aiming to evict the purchaser and (ii) for hidden defects, are the two mandatory warranties which by law are incumbent upon the seller of an immovable property.

COMMERCIAL LEASES

Leases of buildings used for commercial purposes are covered by the provisions of the Romanian Civil Code. Romanian law does not make any difference between the lease in general and this type of

lease. The parties may freely agree upon:

- the initial rent (which can be fixed or variable);
- the duration of the lease agreement;
- the right to sublease.

Commercial leases must comply with some specific mandatory rules, such as:

- the lessee must respect and maintain the destination of the leased property and must use it accordingly;
- the lease agreements concluded under private signature (*înscriș sub semnatura privată*) that were registered with the competent tax authorities, as well as the lease agreements concluded in notarised form, represent enforceable titles for the payment of the agreed rent.

→ Duration : initial term of the lease

- The duration of the lease agreement may not be longer than 49 years. If longer the term will be reduced by law.
- Perpetual leases are prohibited.
- If the lease agreement did not mention a specific duration, but the parties did not intend to conclude it for an unlimited period, the lease duration will be considered to be one year.
- A commercial lease may only be terminated by notice of termination delivered by the lessor. Also, the lessee may issue a request for renewal. Failing that, the lease will be extended beyond its contractual term for an unspecified term, each of the parties having the right to request the termination at any time with a 60-day prior notice.

→ The renewed lease

- When the initial lease is tacitly renewed (*tacita relocatiune*) it will provide the same terms and conditions as the previous lease if there are no contrary provisions in the initial agreement, with the exception of the duration which will be, in principle, unlimited. If the parties decide to extend the term of the agreement before its termination a new agreement (*express renewal*) will be concluded.
- For the conclusion of a new lease agreement, the lessee has, under equal conditions with any other person, a preference right for leasing the property, if he/she has performed the obligations arising from the previous lease agreement.

→ Transfer of leased property

- If the leased property (immovable) is transferred by its owner, the lease will be opposable to the new owner if it was registered with the Land Registry, unless expressly provided otherwise in the lease agreement.
- The lease will remain opposable to the new owner even after the lessee was notified about the transfer, for an at least double duration than the prior notice term requested for terminating the lease agreement (ie. at least 120 days).

TAX

→ Direct acquisition of a property

- The acquisition of a property may give rise to value added tax (VAT) and gives rise to notary public fees and Land Registry fees.
- The sale of land and buildings (and parts thereof) is VAT exempt with an option available to the seller to charge 24% VAT. As an

exception to this rule, the sale of new buildings (buildings sold by 31st December of the year following the year when they were first occupied), parts thereof and building land (land on which constructions may be erected in accordance to the law) is always subject to 24% VAT.

- Corporate sellers of real estate who are not required by law to charge VAT often opt to do so in order to avoid the repayment to the Romanian state budget of the input VAT credit they had claimed upon the acquisition, construction or upgrade of the respective property.
- Corporate buyers of real-estate who buy properties with VAT will find themselves, more often than not, in a position to claim excess input VAT credit from the Romanian state budget. Because of the long time it takes to settle VAT refund claims in Romania, corporate buyers often have to finance the input VAT they pay to the sellers over a long period of time and at a high financing cost.
- Real estate assets are subject to property taxes, due by the owner as of the next month following the acquisition. For buildings, the tax rate commonly applicable to corporate owners is 1.5% computed ad valorem whereas the land tax is in the form of a lump sum/ sqm, which varies depending on factors such as location, category of land, etc.
- Notary public fees may be paid by either of the parties (however they are generally paid in practice by the purchaser) and amount to various percentages depending on the value of the transferred property, varying between 2.2% but not less than lei 150 (approx. equivalent of EUR 35) for properties with a value less than lei 15,000 (approx. equivalent of EUR 3,350), and lei 5,080 (approx. equivalent of EUR 1,130) plus 0.44% for the sum that is over lei 600,001 (approx. equivalent of EUR 133,350) for properties with a value higher than lei 600,001 (approx. equivalent of EUR 133,350).
- Land Registry fees amount to 0.5% of the value declared within the sale-purchase agreement, if the purchaser is a legal person, and 0.15% of the value declared within the sale-purchase agreement, if the purchaser is a natural person.

→ Acquisition of shares in a company holding a property

- The acquisition of shares in a Romanian real estate company does not trigger any particular tax implications. If the shares are acquired from a natural person, the buyer will likely have some tax compliance obligations in connection to the capital gain tax due by the seller.

→ Asset deal vs. share deal

- The asset deal could ensure a step-up in the value of the building which could be beneficial for corporate tax purposes and may generate additional local taxes in the short term. The decision as to the appropriateness of having an asset deal vs. a share deal depends essentially on the purpose of the acquisition and overall investment structure. VAT may also have an impact on an investor's option between an asset deal and a share deal.

RUSSIA



With an invested stock of EUR125bn, Russia is the eighth largest market in Europe. Given the size of the market its total stock is estimated to be well over EUR900bn. The Russian market has not been impacted by the financial crisis, with its stock continuing to grow year-on-year, and has more than doubled over the last five years.

Market activity has been dynamic, even during the crisis, and recorded one of its strongest levels of activity in 2013, which saw some trophy assets sales in both the office and retail markets, often due to international capital.

Private property funds and rich private investors dominated the commercial real estate equity market, whilst commercial banks are the main debt providers.

Moscow sits alongside other global cities such as New York, London, Paris, Shanghai and Tokyo. It is therefore not surprising that the majority of investment activity is focussed on Moscow, largely due to the size of its office stock (13 million sq m at the end of 2013).

Quality shopping centres with high-standard concepts and tenant mixes are going to appear in Moscow. This is likely to stimulate investors' appetite for this new kind of asset.

Despite a subdued economic outlook for the Russian economy, institutional investors have not hold back on acquisitions in this country.

Market sizing

	Russia	Europe
Invested stock* (Total stock)	EUR 125bn (EUR 900bn)	EUR 3,380bn (EUR 8,150bn)
Liquidity ratio* (10y average)	3.6% (4.0%)	4.0% (4.5%)
2013 volumes (10y average)	EUR 4.4bn (EUR 3.1bn)	EUR 139bn (EUR 135bn)

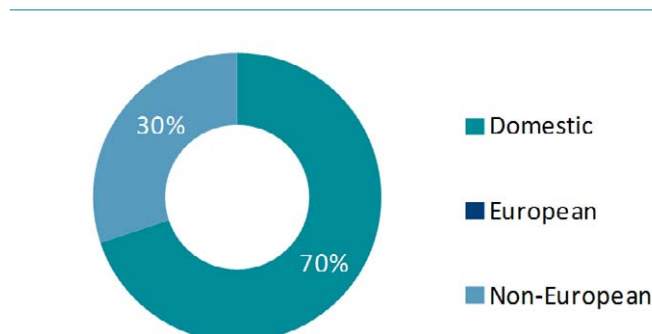
* 2012 figures

Market pricing - Moscow (Q4 2013)

	Office	Retail	Industrial
Current Yield	9.00%	10.00%	11.00%
Min/Max (10y)	8.00-17.00%	8.50-19.00%	10.00-15.00%
Yield definition	Net initial yield		

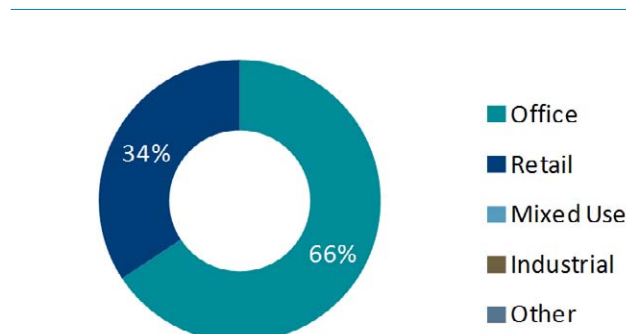
Source : DTZ Research

Investment activity by source of capital, 2013



Source : DTZ Research

Investment activity by asset type, 2013



Source : DTZ Research

PROPERTY LAW

Property rights in Russia are governed by federal legislation (other than some more technical privatisation, planning and construction issues regulated by regional and local rules).

TYPES OF OWNERSHIP

→ Ownership (similar to Freehold)

- Ownership is a full title allowing possession, use and disposal of the property, including leasing it out to tenants.
- Ownership rights to land extend to the surface (soil) layer of the land plot as well as to water (with some restrictions) and plants on the land plot.
- Subsoil is entirely state-owned.

→ Lease right (similar to Leasehold)

- Lease right is an interest allowing possession and use of the property for a specified or an indefinite term.
- Leases can be granted for an indefinite period of time (terminable by either party on three months' notice) or for a specified (fixed) term.
- A fixed term lease can be long term (over one year in relation to land plots and one year or more in relation to buildings or parts of buildings and immovable facilities) or short term.
- Commercial leases are usually long term (five to ten years). In almost all parts of Russia the maximum lease term for land is 49 years.
- Long term lease agreements must be registered with the state in order to be effective. Short term lease agreements and lease agreements for an indefinite term do not require registration with the state (see *infra*).
- Under the general rules governing leases, the tenant has a right of first refusal to renew the lease on expiration, unless the agreement provides otherwise, but the parties are free to alter the terms and conditions of the new lease.
- Should the tenant continue using the property after the lease has expired and the landlord does not object, the lease is deemed to be renewed on the same terms and conditions as the old lease for an indefinite period of time (and is therefore subject to termination by either party upon three months' notice).
- As a general rule, the tenant does not require the landlord's consent to assign, sublease or mortgage their interest in the land, unless otherwise stated in the lease agreement.
- Leases of state and municipal land concluded for a term of over five years do not require the landlord's consent for assignment, sublease and mortgage as a matter of law; conversely, assignment, sublease or mortgage of real estate other than land is subject to the consent of the landlord unless the lease provides explicitly that consent is not required.

→ Other types of property rights

- There are certain rights to property which are at present primarily reserved for state institutions (such as "permanent use"). These are no longer granted to individuals and private entities and are non-transferable.
- In Russia it is not possible to separate the legal interest in property from the beneficial interest.

RIGHTS AFFECTING OWNERSHIP

→ Easement

- Is a burden imposed upon a property, for the use and utility of another property belonging to another owner.
- As an attribute of the right of ownership, easements are transferred with the related tenement.

→ Mortgage

- Is a security encumbering the asset, which entitles the beneficiary to a preferential right over other creditors in the event of a forced sale of the relevant asset; long term leases may also be subject to a mortgage;
- There is no limit on the number of mortgages that may be created over the same property.

→ Lease

- If leased real estate is sold by its owner, the lease survives in full; the new owner assumes the rights and obligations of the landlord by virtue of law.
- Proprietors of buildings or other immovable facilities situated on a plot of land owned by another person are entitled by statute to rights of use as regards the land located underneath such buildings or facilities.

→ Pre-emptive rights

- A co-owner of the property has a statutory pre-emptive right to buy a part of this property sold by another co-owner at a price not more than was offered to third parties.
- In the case of state or municipal land the tenant has, with some exceptions, a statutory pre-emptive right to purchase the land plot if it is put up for sale.
- Where land is privately held, a tenant enjoys a statutory pre-emptive right to purchase provided it owns a building or facility located on the leased land plot; where the tenant does not own a building, the issue will be determined by the terms of the lease as negotiated between the parties.

→ Registration of real estate

Unified State Register of Real Estate

- Starting from 1998, the ownership right and other rights in rem over real estate, most encumbrances and restrictions of such rights (such as long-term leases, mortgages and liens), their accrual, transfer and termination are subject to state registration in the Unified State Register of Real Estate (*Russian abbreviation is EGRP*).
- Rights which arose before 1998 are not required to be registered and will be recognised as valid by the state. These rights must, however, be registered upon transfer or encumbrance.
- Some agreements under which rights in rem and encumbrances which must be registered arise are also subject to state registration (as provided by law) and are null and void without such registration (mortgages are the most notable examples).
- The Unified State Register of Real Estate is, for the most part, a matter of public record and any person may request an extract from this register in relation to particular property.

The extract will contain a description of the property (type, address, size) and reflect the type of registered right to the property, the holder of the right, as well as encumbrances and restrictions of the registered right as at the date of the extract.

State Real Estate Cadastre

- All real estate in Russia is also supposed to be recorded in the State Real Estate Cadastre.
- Conveyancing or encumbering land plots which have not undergone the procedure of official survey and cadastral record are deemed null and void, though forward sale and forward lease (whereby an agreement envisages conveying or encumbering title that is yet to be created) are allowed (at present, there are no similar restrictions in respect of buildings and other fixed facilities).

ACQUISITION PROCESS: KEY STAGES

A typical sale and purchase transaction is a two-stage process involving the execution of a sale and purchase agreement and registration of the transfer of title in the Unified State Register of Real Estate.

The sale and purchase agreement must be a single written document; an agreement by fax or exchange of letters is not valid.

The hand-over of the property is effected by completing a document which formally conveys the property from the seller to the buyer.

As a general rule, if a building or other immovable facility and the underlying land are owned by the same person, sale of the building without the underlying land (and vice versa) is not allowed; if the land happens to be the property of someone other than the owner of the building, the building can still be sold, and the new owner will enjoy the same rights to use the respective part of the land plot underlying the building as the previous one.

Russian law also knows the concept of forward sales of real properties (sale of real properties which are under construction or even not in existence); taking this into account preliminary contracts are no longer used for sale of future real properties.

→ Acquisition by foreign investors

The following restrictions apply to ownership of land in Russia by foreign nationals:

- foreign individuals and entities are not allowed to own land in areas adjoining the borders of Russia; and
- foreign individuals and entities as well as Russian entities with over 50% foreign participation may not own agricultural land.

Subject to the above restrictions, property can be purchased or leased by individuals and companies for their own use or as an investment.

There are no specific restrictions as to lease of land or ownership or lease of buildings and facilities by foreign nationals.

COMMERCIAL LEASES

Commercial leases are treated very much as a matter of private concern, with a rather limited number of mandatory rules and restrictions.

While most of Russia's land is still state or municipally owned, commercial property is predominantly privately held.

As a matter of practice, commercial lease terms tend to favour the landlord or the tenant depending on their respective economic strength, bargaining power and the market conditions in a particular location.

In the past few years the lease market in the developed regions of Russia such as Moscow has been heavily landlord-driven, and leases have tended to benefit the landlord (for example, the landlord having the right to terminate without recourse to the court for the most minor breaches by the tenant, with no corresponding rights for the tenant); however, as a result of the recent economic downturn the position of the landlord has been weakened and tenants have increased their negotiating power in this area.

TAX

→ VAT

- Generally, commercial property transactions are subject to VAT. Presently, sale of land and residential property transactions are not subject to VAT.
- The standard VAT rate is 18%.
- A company's VAT liability is generally calculated as its output VAT invoiced to customers minus the value of input VAT invoiced to the company by suppliers or paid to customs upon the importation of goods. If the amount of input VAT exceeds the amount of output VAT then the difference is recoverable.

→ Withholding tax

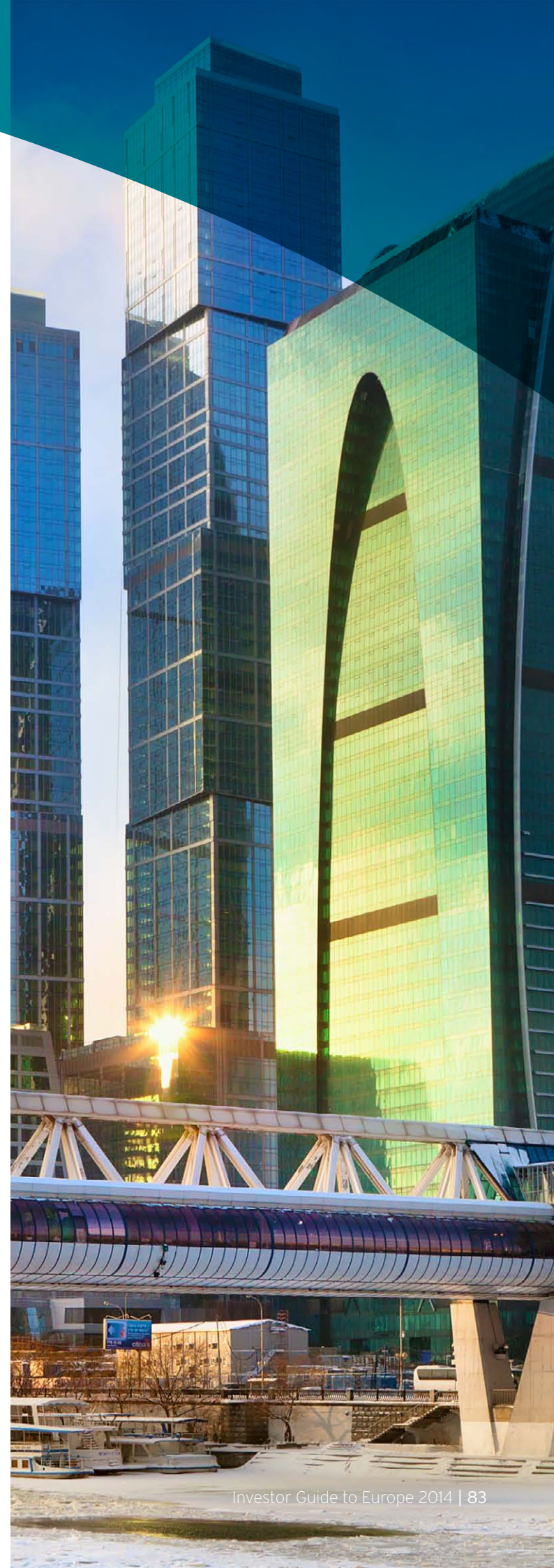
- The sale of a Russian company by its foreign parent entity may be subject to withholding tax in Russia if more than 50% of the Russian company's assets are real estate (exceptions may be provided in double tax treaties).

→ Property tax

- Russian companies are liable to pay property tax on the average annual net book value (in certain cases – cadastre value) of the fixed assets on their balance sheet acquired before 1 January 2013; all movable fixed assets acquired after 1 January 2013 are exempt from property tax.
- Foreign companies with a permanent establishment in Russia are subject to tax on immovable and movable fixed assets attributable to such an establishment (subject to the above exemption for movable fixed assets acquired after 1 January 2013). Foreign companies without a permanent establishment in Russia are subject to property tax on immovable property only.
- Land is exempt from property tax and may be subject to a separate land tax.
- The standard property tax rate is 2.2%; special rates apply to property taxable in cadastre value; regional authorities may reduce that rate or even provide a full exemption for all or certain categories of taxpayers.

→ Land tax

- Land tax applies to land owners at the rate determined by the municipal authorities. Land tax is assessed on the cadastre value of the land, which used to be substantially lower than its actual market value; however, last year this difference started to decrease.
- Land tax rates may not exceed 0.3% of the registered value of agricultural and residential land. With respect to other land plots, the maximum rate is 1.5% of the registered value.
- The Russian Tax Code permits municipal authorities to establish tax incentives for certain categories of taxpayers.
- Businesses leasing land are not subject to land tax. Instead, they are liable for the land lease payments established by federal, regional or local authorities or other land owners.





SLOVAKIA



After very low activity recorded in 2012 the Slovak investment market experienced a solid recovery, confirmed by the entry of new institutional investors such as Generali Group and Nepi and a significant year on year increase in investment activity during 2013.

The institutional investors are primarily concentrating on Bratislava's prime offices. However, increasingly retail properties are becoming attractive for domestic investors or private capital as well as cross border investors, as was the case with Aquario Nové Zámky and Aupark Žilina.

Slovakia is benefitting from the Euro currency, which was adopted in 2009 as well as solid growth prospects of the economy. Slovakia gained the best position among the Central and Eastern Europe (CEE) countries in World Bank's Doing Business Report 2008 - 2013.

Market sizing

	Slovakia	Europe
Invested stock* (Total stock)	n/a n/a	EUR 3,380bn (EUR 8,150bn)
Liquidity ratio* (10y average)	n/a n/a	4.0% (4.5%)
2013 volumes (10y average)	EUR 1.12bn n/a	EUR 139bn (EUR 135bn)

* 2012 figures

Market pricing - Bratislava (Q4 2013)

	Office	Retail	Industrial
Current Yield	6.25%	6.00%	8.00%
Min/Max (10y)	n/a	n/a	n/a
Yield definition	Net initial yield		

Source : DTZ Research

PROPERTY LAW

TYPES OF OWNERSHIP

→ Freehold

Ownership

- The Slovak Civil Code defines ownership as the right to hold, use, enjoy the fruits and benefits of, and dispose of a property in the most absolute manner, subject only to statutory restrictions. All owners shall have equal rights and obligations and shall be provided with equal legal protection.
- Ownership rights, right of lease of a land plot (if it exceeds or is expected to exceed at least five years in duration), easements, mortgages, pre-emptive rights and other rights regarding real estate are registered in the Slovak Land Registry (*kataster nehnuteľností*).

Co-ownership

- Pursuant to the Slovak Civil Code a property may be co-owned by more persons (legal or natural), rights and obligations of which are determined by the ownership share to the property (*podielové spoluvlastníctvo*).
- The ownership shares of co-owners are equal, unless otherwise provided by:
 - statutory provisions (e.g. as a result of heritage); or
 - agreement of co-owners.
- The co-owners decide upon the management of co-owned property by a majority decision of co-owners based on the size of their shares.
- If one of the co-owners wishes to transfer his/her share, the other co-owners have a statutory pre-emptive right, unless statutory exceptions apply (e.g. transfer of the share to family relatives).
- The co-owners can agree on termination of the co-ownership and on mutual settlement.
- Ownership of buildings with apartments and/or non-residential premises is accompanied with a specific type of statutory co-ownership. The units in the building (flats, non-residential premises) are owned by the owners of such units (either solely or as a co-ownership) and then all owners of the units in such building share a co-ownership right to the joint parts of the building (e.g. a roof of the building, stairs and halls), joint equipment of the building (e.g. chimney of the building), accessories of the building (e.g. garden) and to the land plot (on which is the building situated and to the adjacent land plot). This kind of co-ownership cannot be terminated.

Separate ownership of buildings and land plots

- In Slovakia, buildings do not form legally part of the land plot they are built upon (the *superficies solo cedit* principle does not apply). Therefore, it is possible that the building and the respective land plot are owned by different persons. This also means that transfer of ownership of building is independent from transfer of ownership of a land plot it is built upon (i.e. it is possible to transfer just the building without the land plot as well as to transfer both together).

→ Leasehold

- The owner of the land plot as the landlord and the constructor of a building may agree on a long term lease of the land plot, which includes the right of the constructor to build and use the building on the land plot (this must be specifically agreed, otherwise the tenant is not entitled to build on a leased land plot).
- If such lease is terminated, the tenant is generally required to remove the building, unless the parties agree otherwise.

RIGHTS AFFECTING OWNERSHIP

→ Easement (*vecné bremeno*)

- Is a burden imposed upon a property, obliging the owner of such property to tolerate, to refrain from or to do something in favour of another person.
- Benefits either any owner of certain property (*in rem*) or a particular person (*in personam*).
- As an attribute of ownership right, easements (*in rem*) are transferred with the ownership of the respective ("entitled") property.

→ Mortgage (*záložné právo k nehnuteľnosti*)

- Is a security encumbering the asset, which entitles the beneficiary to a preferential right over other creditors in the event of a forced sale of the relevant asset.
- If the secured claim is not fulfilled duly and timely, it entitles the beneficiary to sale of property and settle its claims from the proceeds.
- Any real estate property in Slovakia can be mortgaged (generally also with more than one mortgage).

→ Pre-emption right over real estate

- Is a right that is created either by virtue of law (e.g. right of co-owners, apartment buildings) or by an agreement.
- Pre-emption created by an agreement can be agreed in a form (i) of an agreement enforceable only between the contractual parties (*contractual pre-emption right*) that does not pass to subsequent owners; or (ii) of a right encumbering the property (*in rem pre-emption right*), which is binding also upon the legal successors of the obliged person and is created upon its registration in the Slovak Land Register
- The consequences of violation of a pre-emption right created upon an agreement depend on its type: (i) in case of breach of a *contractual pre-emption* right, the party holding the right may only claim damages from the party in breach (unless other sanctions, such as contractual penalty, are agreed); and (ii) in case of breach of a *in rem pre-emption* right, the party holding the right may demand that the property is offered to it for purchase by the person that acquired it in breach of the pre-emption right or, if it does not make use of the right to claim such offer from the new owner, the pre-emption right remains preserved towards the new owner of the property.

ACQUISITION PROCESS: KEY STAGES

Foreign investors wishing to carry out real estate transactions do not need any prior authorisation.

However, there are some restrictions for foreign investors regarding acquisition of land that belongs to the agricultural land fund or forest land fund.

→ Negotiations

- At first, a non-disclosure agreement can be signed between the contractual parties, which allows for full access to the real estate and respective documentation.
- The contractual parties can also conclude a letter of intent, which may be of informative nature (declaring understanding between the parties) or binding, depending on the agreement of the contractual parties.
- Due to historical reason, which resulted in complicated (and often unclear) ownership relationships and due to the fact the information registered in the Slovak Land Registry does not necessarily reflect the actual ownership status, a proper due diligence process is recommended.

→ Preliminary contracts

- The contractual parties can enter into preliminary contracts, which regulate their rights and obligations during the transaction.

Agreement on future contract (*zmluva o budúcej zmluve*)

- Is an agreement, in which the contractual parties agree on essential terms of the future transfer agreement (e.g. property, purchase price etc.) and agree that they will conclude such agreement with the agreed time period. It commonly contains conditions, fulfillment of which entitles one or both parties to call upon the other to enter into the transfer agreement.

→ Purchase agreement

- Is an agreement on basis of which the ownership of a real estate property is transferred from the seller to the buyer; it is necessary that it is concluded in written form and that signature of seller is notarized.
- Generally, there is no re-negotiation of the terms and conditions of the sale which have been agreed at the agreement on future contracts (unless the parties agree upon different terms).
- The transfer of title to the real estate becomes effective upon its registration with the Slovak Land Registry.
- In practice, escrow account mechanism (with a bank or a notary) is commonly used by the parties for payment of the purchase price.
- Can be concluded with conditions precedent (*odkladacími podmienkami*), whereas the transfer remain subject to fulfilment of these conditions.

Contract for work (*zmluva o dielo*)

- Can be used for acquisition of buildings that have not yet been constructed.
- It is a common practice that the purchaser pays the price step by step along the construction steps until completion.

COMMERCIAL LEASES

In Slovakia, a lease of a real estate property is governed by several legal regulations depending on the subject of lease (e.g. warehouse, flat, parking spaces, whole building).

Leases of non residential premises (e.g. premises used for commercial purposes) are regulated by the Act on Lease and Sublease of the Non Residential Premises.

The contract for lease of the non residential premises shall include following essential terms, otherwise it could be considered invalid:

- clearly defined leased premises;
- purpose of lease, which shall comply with the construction documentation of the leased premises;
- amount of the net rent (excluding the service charges);
- due date for the rent and the method of its payment; and
- the duration of lease.

Generally, the parties are free to determine the conditions of the lease (such as amount of rent, term of lease, notice period, etc.)

→ Duration of the lease

- In general, the lease of non residential premises for business purposes can be agreed for (i) a definite period of time; or (ii) an indefinite period of time.
- The lease agreed for a definite period of time can be terminated by landlord's termination notice, unless otherwise agreed by the parties, if:
 - the tenant uses the premises in breach of the lease agreement;
 - the tenant is in delay with payment of rent or accompanied services for more than a month; or
 - the tenant subleases premises without prior consent of the landlord.
- The lease agreed for a definite period of time can be terminated by tenant's termination notice, unless otherwise agreed by the parties, if:
 - the tenant ceases to hold the license for conducting business, for purposes of which the premises were leased;
 - the leased premises become unfit for the agreed purpose of use through no fault of the tenant; or
 - the landlord is in breach of its material contractual obligations.
- The lease agreed for a definite period of time can be prolonged by an agreement of the contractual parties, automatic prolongation is generally possible.
- The lease agreed for an indefinite period of time can be terminated by landlord or tenant by a simple written termination notice with three months notice period, unless the parties have agreed otherwise.

→ Transfer of business

- Under Slovak law, it is not possible to transfer/assign all rights and obligations under the lease (i.e. whole contractual relationship) by a unilateral decision of one of the parties. The validity of such an assignment on basis of an agreement of the tenant, landlord and a third party is questionable, but regardless seen quite often in practice.
- The creditor (e.g. landlord) can assign its claim against the debtor (e.g. tenant) to a third party (e.g. bank) without prior consent of the debtor unless otherwise agreed by the parties.
- The third party (e.g. mother company of the tenant) can assume the obligations of the debtor (e.g. tenant) only with the consent of the creditor (e.g. landlord).
- The lease of non residential premises can be transferred by virtue of law, if it is a contractual relationship that is considered to form a part of an enterprise, which is being transferred under the agreement on transfer of an enterprise or its part (*zmluva o predaji podniku*).

→ Rent and its evolution during the lease

- Amount of net rent is freely set by an agreement of the contractual parties.
- Indexation of the rent is market standard and the contractual parties are free to choose any index (which is sufficiently determined in the agreement) – commonly used is the Monetary Union Index of Consumer Prices published by Eurostat;
- There is no statutory indexation of rent for standard leases.

→ Renewed lease

- Renewal of lease of the non residential premises is possible upon an agreement of the contractual parties without any limitations.
- Generally, the prolongation of the lease of non residential premises is subject to the same conditions, unless the parties agree otherwise.

TAX

→ Property tax

- The property tax related to owned real estate is determined by the municipalities, so the tax varies depending on where the real estate is located (even within the same city) and also on the purpose it is used for (e.g. in Bratislava the property tax on buildings for 2014 varies from EUR 0.36 per 1 m² per year to EUR 8.30 per 1 m² per year).

→ Property transfer tax

- In Slovakia, the transfer tax for real estate was abolished on January 1, 2005.

→ Direct acquisition of a property

- Income (gain) acquired from direct sale of a real estate property is subject to income tax, while exemptions may apply. Currently, the tax rates are 19 %/25% for natural persona and 22 % for legal entities.
- Direct sale of a building (or its part) including the land plot, on which it is built, is exempt from the value added tax (VAT), provided that the sale is made five years after the occupancy

permit was issued or after the building was actually used for at least five years for the first time; however, the taxpayer can decide not to make use of the exemption. Exempt from VAT is also a direct sale of a land plot (except for land plots determined for construction). Please note that exemptions may apply. The current VAT rate in Slovakia is at 20%.

→ Acquisition of shares in a company

- Capital gains from the sale of shares in a company are subject to income tax, while exemptions may apply.
- The capital gains from sale of shares are not subject to VAT, while exemptions may apply.



SPAIN



Market sizing

	Spain	Europe
Invested stock* (Total stock)	EUR 320bn (EUR 510bn)	EUR 3,380bn (EUR 8,150bn)
Liquidity ratio* (10y average)	0.7% (1.9%)	4.0% (4.5%)
2013 volumes (10y average)	EUR 3.0bn (EUR 5.0bn)	EUR 139bn (EUR 135bn)

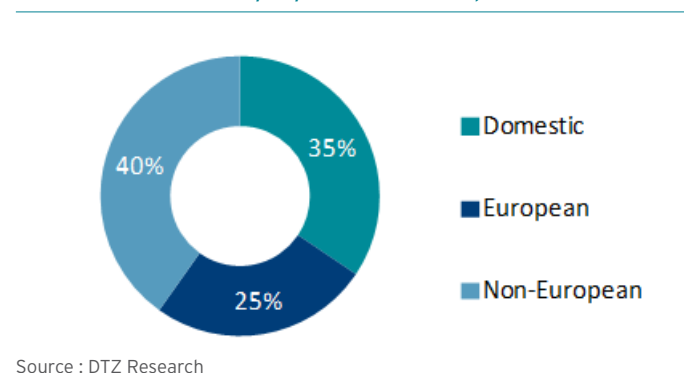
* 2012 figures

Market pricing - Madrid (Q4 2013)

	Office	Retail	Industrial
Current Yield	6.00%	5.75%	8.25%
Min/Max (10y)	4.00-6.25%	5.00-6.50%	6.00-8.25%
Yield definition	Net initial yield		

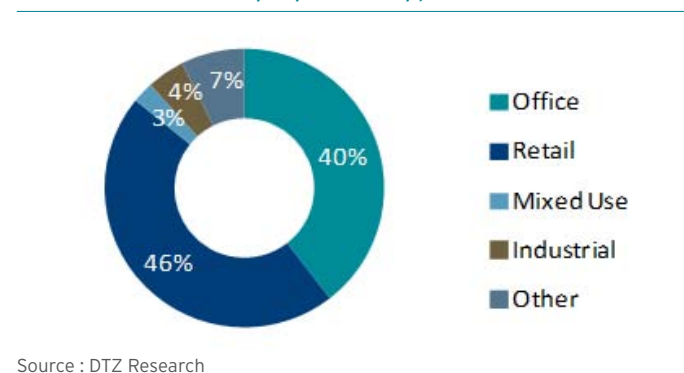
Source : DTZ Research

Investment activity by source of capital, 2013



Source : DTZ Research

Investment activity by asset type, 2013



Source : DTZ Research

Spain has the fourth largest invested stock in Europe. Activity is focussed on the two main cities of Barcelona and Madrid. Spain's commercial real estate market has suffered greatly due to the protracted economic crisis and the high levels of debt secured against both commercial and residential assets.

The recent transfer of underperforming loans into the bad bank, SAREB, is helping to support renewed activity as the economy begins to show signs of recovery. Private companies and individuals play a large part in the real estate market. Unlisted funds are also active investors. Listed companies have been less active since the onset of the crisis as many have struggled with high gearing.

With the onset of the crisis and the strained Spanish economy, many domestic investors ceased their investment activities and foreign investors became increasingly important in the market. Their share of the market has averaged 60% over the last three years, double the level before the crisis. Spain is currently attracting investors from around the globe, with the majority of foreign investment focussed on prime office and retail assets in Madrid and Barcelona.

In 2012 the government amended the current laws regarding SOCIMIs (Spanish REIT equivalent), to make them more competitive and congruent with other countries' regimes.

Debt funding remains a significant barrier for the property market as many banks continue to try and clean-up their balance sheets and reduce their overall exposure to the sector. Institutional lending is limited.

Spanish land legislation provides a highly developed legal system that affords several protection mechanisms. This has proved attractive for real estate investors in search of business opportunities while enjoying sound protection and legal security for their investments.

This section offers a brief overview of the legal framework for investing in the Spanish real estate market and covers the main that should be taken into account in the context of real estate transactions

ACQUISITION PROCESS: KEY STAGES

→ Ownership of property in Spain

- In Spain, the most common way of acquiring ownership over a real estate asset is by acquiring «full domain», or complete ownership, over the asset. This form of ownership interest is not limited in time, held in perpetuity. The owner owns the land itself, the subsoil below it, the airspace above it and any buildings constructed on it (with the exception of the surface rights). Therefore, «full domain» provides the owner with total control over the land. As a result, the owner is able to grant leases or easements and can sell the land and its constructions to a third party. The concept of «full domain» is similar to «freehold» in Anglo-Saxon law.
- Nevertheless, there are other ways in which rights can be acquired over land, such as surface rights and administrative concessions. However, these rights are limited in time: surface rights cannot extend beyond 99 years, whereas administrative concessions are limited to a period of time which varies depending on the kind of concession granted. In addition, at expiration of either of these rights, ownership of the asset in question will revert to the previous owner.

→ Registration of property

- The Spanish Property Registry provides information on the status of ownership and charges over real estate assets. Information held at the Property Registry is public and is thus accessible to third parties.
- Registration of property in Spain is discretionary, which means that the effectiveness and validity of transactions over real estate assets is not conditional on a record of transaction being registered at the Property Registry. There are only two exceptions to this general rule: surface rights and mortgages must be registered at the Property Registry for them to be valid.
- Although not mandatory, registration is nevertheless highly advisable. Once registration has been completed, it provides evidence of the owner's title to the land and/or charges and encumbrances to which the property is subject; protection is therefore afforded against third parties. It should be borne in mind that discretionary registration may well result in differences between the information contained at the Property Registry and the assets' actual status.

→ Structure of sale and purchase transactions

- Spanish law allows any individual or legal entity to acquire property in Spain. There are no investment restrictions in this regard.
- Acquisitions tend to be preceded by some form of preliminary documents, in which the parties establish an initial commitment and, occasionally, certain terms and conditions for the future

sale. These documents could include teasers, letters of intent and offers to purchase issued by the potential buyer.

- After signing some or all of these documents, if at all, the buyer will normally conduct a legal due diligence and, in some cases, a technical due diligence, of the property.
- Once the due diligence process has been completed, and unless important contingencies are found, the parties usually negotiate a private sale and purchase agreement. This private agreement will include all the terms and conditions applicable to the transaction including the seller's obligation to sell the property to the buyer and the mutual obligation of the latter to buy the property. The agreement will also include any issues detected in the course of the due diligence process. The private contract agreement is normally conditional on the prior fulfilment of certain conditions precedent or the buyer obtaining financing for the transaction. A deposit is typically paid at this moment against the purchase price.
- The transaction will be completed with the execution of the public deed of sale and purchase. When this document is executed, ownership of the property passes from the seller to the buyer, unless otherwise expressly indicated in the public deed. The balance of the purchase price is paid on completion unless the parties have agreed a deferred payment structure.

COMMERCIAL LEASES

→ Legal regime

- Lease agreements signed over real estate properties as from 1 January 1995 are governed by the Spanish Urban Leases Act of 1994, currently in force, with the latest modifications arise from the Law 4/2013, 4 June. This Act distinguishes between two different kinds of leases: leases for residential use -signed over a habitable construction the fundamental use of which is to act as the lessee's permanent home- and leases for non-residential use -when the construction is to be used other than for residential uses-.
- Lease agreements for non-residential use are governed by the provisions of the agreements reached between the parties (completely valid unless they are unlawful, immoral or contrary to public policy); in the absence of an agreement, the provisions of the Spanish Urban Leases Act will apply and, subsequently, the provisions of the Spanish Civil Code.

→ Form

- Leases can be signed between parties in a private document and in a public deed executed before a notary public. As there is no obligation to register leases at the Property Registry -for which it is necessary to execute a public deed before a notary- and due to the cost of executing the public deed -which triggers Stamp Duty which varies in each autonomous region ranging between 0.25% and 1.5% of the total rent accruing during the entire lease- parties tend only to sign private agreements.

→ Term

- Spanish legislation offers the parties freedom to agree the duration of a non-residential lease and the terms and conditions of any extensions to the agreement.
- It should be taken into account that, since the entry into force of the Urban Leases Act (1 January 1995), mandatory extensions are not established by law. Therefore, once the agreed term of

the lease (or any extensions, if any) comes to an end, neither the lessor nor the lessee is able to require the other party to continue with the lease. Some common terms and conditions in relation to the duration of lease agreements are outlined below:

Initial duration

- Lease agreements commonly establish an initial term. In practice, certain periods are typically established depending on the type of building or premises being let:
 - (1) In the case of commercial units, small spaces or parts of buildings to be used as offices, the initial term is typically 5 years.
 - (2) In the case of entire buildings or large commercial premises, the initial term tends to be longer, between 10 and 15 years.
 - (3) In the case of lease agreement in the context of sale & lease back transactions, even longer terms can be agreed (up to 20 or even 25 years).

Extensions

- Once the initial term has elapsed, the parties can agree an extension. It is common for the extension to operate in one of the two following forms:
 - (1) At the end of the initial term, the lease agreement is extended for a new term (equal or shorter; it is not normally longer than the initial term). If so, the agreement may establish that the extension is at the discretion of the lessee (which will be entitled to extend the agreement or not to do so, normally by serving a minimum prior notice of its decision) and mandatory for the lessor (which must accept if the lessee requests the extension); or discretionary for both parties, in which case either party may reject the extension.
 - (2) Annual extensions (or other periods: 2+2+2...), which are automatic if at the end of the initial term or any extension period neither of the parties requests the end of the agreement by serving minimum prior notice.

Lessee's right to terminate the agreement prematurely

- It is common for the lessee to be entitled to terminate the agreement once a minimum period of the lease has elapsed, shorter than the initial term agreed for both parties. That minimum period is therefore considered to be mandatory for both parties.

Tacit continuation of the lease

- If at the end of the term of the agreement and extensions, if any, the lessee continues to occupy the premises or building for fifteen days with the lessor's acquiescence, the lease will be extended for the same period as that set for establishing the rent (articles 1,577 and 1,581 of the Spanish Civil Code, in relation to article 1,566 of the Spanish Civil Code).

→ Rent

- The parties are free to establish the rent, although this is normally done according to prevailing market conditions. In Spain, rent

is typically established in two different forms: fixed rent (although subject to review); variable rent (this is more common in the case of commercial establishments). In the case of variable rent, the parties agree a minimum guaranteed rent (accruing in any case) and a variable rent component depending on the gross turnover obtained by the premises (which is only paid if the minimum guaranteed rent is exceeded).

- In the case of non-residential lease agreements, the parties are also able to decide how they wish for the rent to be reviewed throughout the duration of the agreement. It is common to establish annual reviews of the rent according to the variation of the Consumer Price Index (CPI) in the 12 preceding months.
- Other rent review mechanisms may also be established, especially in the case of long-term agreements: for example, according to market prices, extraordinary reviews every so many years by a certain percentage over the CPI.

→ Deposit and additional guarantees

- Under the Spanish Urban Leases Act, lessees in non-residential lease agreements must pay the lessor a deposit equivalent to two months of rent when the agreement is signed. The lessor may be required to deposit that amount at an official organism, in compliance with the regional legislation applicable at the location of the let premises. Breach of this obligation could lead to an administrative penalty. The deposit cannot be reviewed for the first five years of the duration of the lease.
- According to the Urban Leases Act, the lessee may also be required to provide an additional guarantee; it is common that this take the form of a bank guarantee for a certain number of monthly rent payments.

TAX

Asset deal

- Spanish law distinguishes between transfers made by persons or companies that are subject to Value Added Tax («VAT») and transfers by persons or companies that are not.
 - (1) Transfers of real estate assets by persons or entities which are not VAT payers: In this case, Transfer Tax is applicable. This tax is non-recoverable and depends on the autonomous region where the asset is located. This tax could be up to as much as 11% of the total amount of the transaction.
 - (2) Transfers of real estate assets (other than residential properties) by VAT payers:
 - When the asset constitutes urban land, a plot that is being developed, or land that is to be built upon: the acquisition is subject to VAT (21%) and to Stamp Duty (between 0.5% and 1.5% of the purchase price, depending on the location of the asset).
 - As a general rule, when the asset does not constitute developable land or if the transaction entails a second or subsequent transfer of a building, the transaction will be subject to but exempt from VAT. If so, the transaction is subject to Transfer Tax (and the transfer would be subject to Transfer Tax at rates which range between 2% and 11%, depending on the location of the real estate asset). This Transfer Tax is a final cost.
- Nevertheless, if the purchaser is entitled to a full deduction of VAT borne on the acquisition (i.e. this should be the case if it carries out VATable activities –e.g. activities subject to and not exempt from VAT such as leasing of commercial/industrial properties), it may be possible to

waive the VAT exemption; if so, the acquisition would be subject to VAT at 21% and to Stamp Duty at rates which range between 0.5% and 2.5%.

The above notwithstanding, if the transaction entails a transfer of an independent business unit (i.e. a group of assets capable of operating independently such as, for example, a hotel – where not only the hotel building is acquired but also the hotel operations), the transaction will not be subject to VAT and Transfer Tax will apply at rates ranging between 6% and 11%. As opposed to VAT exempt transactions, please note that there is no possibility to make a waiver and avoid Transfer Tax.

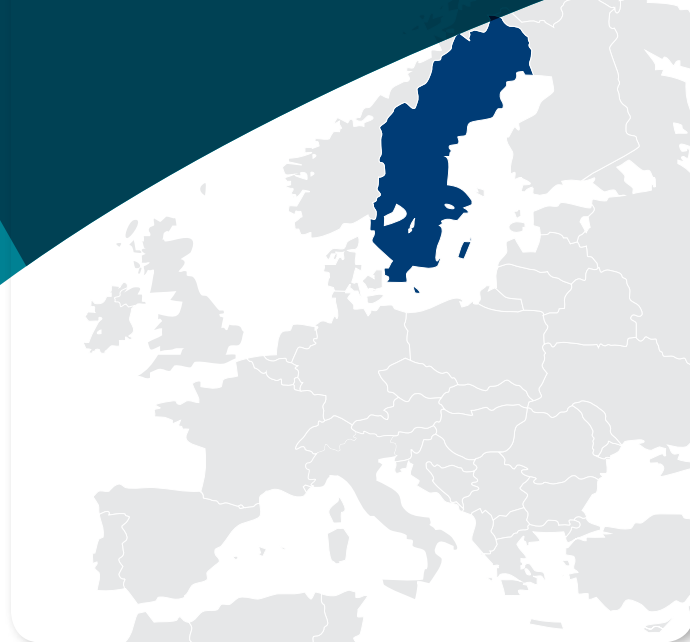
Share deal

- Transfers of shares are generally exempt from indirect taxes (i.e. VAT, Transfer Tax and Stamp Duty). Please note that until October 2012, in case of acquisitions of stakes of control in companies whose assets were mainly composed of real estate assets, the acquirer was liable for Transfer Tax which was triggered on the value of the underlying real estate (and proportionally to the stake that was being acquired). This notwithstanding said regime has now been changed. Currently, indirect taxes would only apply where the parties have intended to evade payment of taxes that would have been due on the transfer of the underlying properties and it is presumed that this is the case where the underlying properties are not business assets

→ Costs

- The parties would need to pay notary and registration fees.





Sweden is the largest of the Nordic markets by stock and the ninth largest market in Europe. Although smaller than the UK, Sweden has had the highest liquidity ratio over the past ten years and is the second most liquid market globally.

Investment is not just focussed on the capital Stockholm, but also across the country, which provides more diversity for investors. The country has a strong investor base, with many active institutions and property companies. It also has an active listed sector, although there are no REITs in Sweden.

Historically the market has seen strong levels of domestic investment as well as overseas investors, notably from neighbouring Norway and the UK. There are also a number of funds active in sourcing capitals from global investors.

Most investors focus on high-quality so-called prime real estate, especially within the office and retail segments. Foreign investors concentrate mostly on prime retail and logistics properties let on long-term contracts. As there is a limited supply of property for sale in the prime segment, an increasing number of investors are tapping into the secondary segment.

Although impacted by the financial crisis, Sweden has been seen as a relative safe haven, and market activity recovered strongly from a low in 2009. Much of this activity has been driven by domestic investors.

Swedish banks have also retained healthy balance sheets and have not been as exposed to under-performing loans. Debt is readily available, mostly from traditional banks. Institutional lending remains limited.

Market sizing

	Sweden	Europe
Invested stock* (Total stock)	EUR 120bn (EUR 165bn)	EUR 3,380bn (EUR 8,150bn)
Liquidity ratio* (10y average)	6.5% (9.0%)	4.0% (4.5%)
2013 volumes (10y average)	EUR 7.5bn (EUR 9.0bn)	EUR 139bn (EUR 135bn)

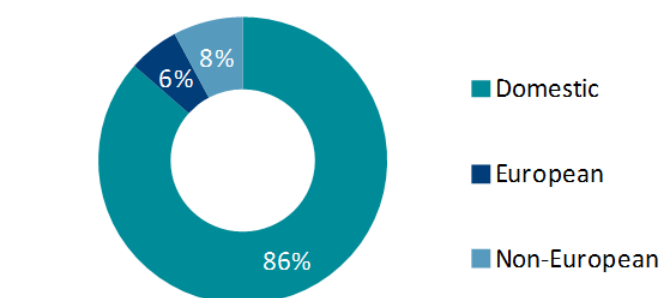
* 2012 figures

Market pricing - Stockholm (Q4 2013)

	Office	Retail	Industrial
Current Yield	4.50%	4.50%	6.75%
Min/Max (10y)	4.25-6.25%	4.25-6.25%	5.75-8.00%
Yield definition	Net initial yield		

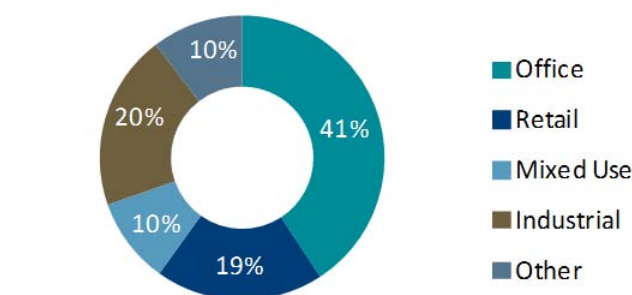
Source : DTZ Research

Investment activity by source of capital, 2013



Source : DTZ Research

Investment activity by asset type, 2013



Source : DTZ Research

PROPERTY LAW

TYPES OF OWNERSHIP

→ Freehold

Ownership

- Under Swedish law, any legal entity or natural person may own real estate. The ownership of a real property (which has always defined borders and a registered name and number), is registered in the Swedish Land Code. The ownership of a real property in Sweden has a strong protection. With the ownership of the real property come the real-estate rights described further below.
- Title, transfer or mortgages as well as certain encumbrances (such as easement) must be registered in the Swedish Land Register (*Fastighetsregistret*).
- Not only the land, but also fixtures (both physical and legal) belong to the real property (and therefore the ownership). With regard to physical fixtures, the principal rule is that it must have been provided by the owner of the real property to become real property.

Co-ownership

- Several persons, again natural as well as legal, may co-own Swedish real properties. However, such co-ownership cannot regard a specific, physical part of the real property unit, but will be an economic percentage of the real property as a whole (the purchase is otherwise invalid).
- In using and disposing the real property, the co-owners must in principal agree. There is a certain statute providing what will apply if the co-owners do not agree (for example, a co-owner can force public auction).

Three dimensional property formation

- Division of a real property into units, stacked horizontally and/or vertically, each with its own straightforward right of ownership entitling its owner to build within the limits of the unit and with no share in or right of ownership on common parts (however often solved with easements, see further below, for e.g. upper 3D properties to stairwells and elevators on lower 3D properties).
- Are often used for real property complexes in which the same real property is to be held separately by various owners (private as well as public entities) for different uses.
- Must be suitable for containing a building or part of a building. It is further required that the 3D property leads to a more efficient management of the building or that it is required in order to finance the construction of it.

RIGHTS OF USE OF REAL PROPERTY

Under the Swedish Land Code there are several different rights of use of real property, where (commercially) the most important ones are ground lease (Sw. *arrende*) and tenancy. Other common rights of use are site-leasehold (Sw. *tomträtt*) and easements. All these rights of use are based on agreements, where however easement can also be created by resolution by the surveyor's office.

→ Ground lease

- Is a right for the lessee to lease land on a real property for a long term.
- There are four different types of ground leases depending on what the purpose of leasing the land is and, depending on the purpose, the regulation is unequally strict with regard to the protection of the lessee.

→ Tenancy

- Is a right for the tenant to, permanently, use a house or part of a house on the real property for a rent. The regulation on tenancy is extensive and in most parts mandatory for the benefit of the tenant (however, the rules regarding commercial premises are not as strict in this manner compared to residences).

→ Site-leasehold

- Is a right for the lessee to lease the land of a real property (the entire real property) for, in principal, an eternal period of time.
- Can only be granted by a governmental body, such as a municipality. The lessee owns the buildings on the property and has in many ways equal rights to the property as he would have if he was the owner of it (he is e.g. entitled to assign the site-leasehold or to grant other rights of use to it).

→ Easement

- Is a burden imposed upon a property, for the use and utility of another property, based on either an agreement under the Swedish Land Code or an official resolution by the surveyor office.
- Is exercised to the detriment of the property assets which they encumber - servient land - and to the benefit of adjoining assets which they enhance - dominant land.
- As an attribute of the right of ownership, easements are transferred with the related tenement.
- While the owner of a dominant land may, at its expense, carry out any work required to use or to preserve the easement, it is not entitled to do anything to aggravate the situation of the servient land; the owner of the servient land must allow the easement to be exercised without doing anything to restrict it.

LIEN ON REAL PROPERTY

→ Mortgage

- Is a safe security (corresponding to a certain monetary amount) encumbering the real property, which entitles the beneficiary to a preferential right over other creditors to the owner in the event of a forced sale of the real property. In order to be entitled to such security, the beneficiary must have had a mortgage deed provided to him from the owner or, in case the mortgage is only electronic, be registered in the Swedish Land Register (which is most common today).
- Confers a right entitling a secured creditor to take possession of the asset offered as security, even if it is in the possession of a third party.
- Any real property in Sweden may be mortgaged and there is no limit on the number of mortgages that may be created over the same property.

- Is usually the normal security for bank institutes when the acquisition of a real property is financed by a bank loan.

ACQUISITION PROCESS: KEY STAGES

Foreign investors wishing to carry out real estate transactions do not need any prior authorisation.

→ Due diligence and Lol

- As a preliminary step, it is common in commercial real estate transactions that the parties enter into a Letter of Intent, containing a binding non-disclosure clause and non-binding clauses on e.g. ean indicative purchase price, due diligence and negotiation process.
- Discussions are usually pursued within the frame of a preliminary agreement providing for an exclusivity period during which the due diligence exercise is carried out and at the expiry of which the purchaser is expected to confirm its initial offer.

→ Structuring

- It is relatively rare that commercial real property transactions are carried out without any kind of structuring. Due to the Swedish rules on participation exemptions, and as it is still (early 2014) possible to carry out intra-group transfers of real estate to a wholly owned subsidiary at a price below market price, most real estate transactions are carried out as share deals (please see below). A share transfer does not trigger stamp duty, even if the real property is the only asset of the transferred company.

** if a real property in question is not already owned by a special purpose vehicle (and it is relatively common that SPVs are in place) it is sold into a newly formed limited liability company.*

→ Share purchase agreement / Real Property transfer agreement

- As set forth above, real properties are generally based on a share purchase agreement regarding a SPV that owns the property. The SPA is normally negotiated, beginning at the end of the due diligence process. The SPA usually contains warranties regarding the company as such, including financial representations- and warranties, as well as warranties regarding the real property as such, and regarding leases on the real property etc.
- At completion of a share sale, the buyer will need to appoint a new board of directors. Other than that, very few measures involving governmental body will need to be involved.
- In case the sale is a direct sale of a real property (and not a share sale), there is a wide spread use of two documents for the sale, one purchase contract and one deed of sale. The purchase contract is entered into on signing and contains all the warranties and limitations and, if applicable, conditions precedent that the parties have agreed. On closing, a deed of sale (*köpebrev*) is issued, containing only the formal requirements

for a transfer of a real property under Swedish law.

- In a direct sale of a real property, the buyer must register title of the real estate following the purchase.
- No notarisation is required in Sweden.

COMMERCIAL LEASES

Chapter 12 of the Swedish Land Code is regularly referred to as the Swedish Lease Act as it covers leases of premises for both commercial and residential purposes. The Lease Act is mandatory insofar that any provisions in a lease agreement that are less favourable for the tenant than what is stipulated in the Lease Act are unenforceable (with a few exceptions explicitly set forth in the Lease Act). Certain provisions of the commercial leases may be freely agreed by the parties, such as:

- the initial rent (which can be fixed or variable)
- the term of the lease (however limited by certain other rules (to a maximum of 25 years within areas subject to a zoning plan)
- service charges.

However, commercial leases must comply with some mandatory rules.

Duration: initial term of the lease

- Perpetual leases are not enforceable.
- The parties to a short term lease (less than nine months) may agree that the lease terminates without notice. For lease with an indefinite term or a fixed term of at least nine months, the lease always has to be actively terminated to expire. Otherwise, it will be automatically extended. It is market practice to agree on a fixed term both for the initial period and for any extension periods. Usually, due to certain limitations on how the rent may be described, the fixed term will be at least three years.

→ Transfer of business

- The tenant is generally entitled to transfer a lease along with a transfer of the business carried out on the premises in question.
- Validity of restrictive clauses:
 - transfer of the lease without prior written consent from the landlord or a related business transfer is prohibited unless otherwise agreed.
 - clauses limiting the transfer to various conditions such as prior information of the transfer by the landlord, prior payment of any unpaid balance, drafting of the transfer agreement as a deed to which the landlord is a signatory, etc., are deemed valid.
 - in the case of assignment of the lease, it may be provided that the tenant remains jointly and severally liable with the assignee (for example in intra-group assignments) for the tenant's obligations under the lease, in particular, the payment of rent and charges.

→ Evolution of the rent during the initial lease

- Rent is usually yearly adjusted in accordance with an indexation clause providing for an adjustment of the rent on the basis of changes in the Consumer Price Index, published by the Swedish Board for Statistics. This is one of the adjustments that requires that the term of the lease is fixed and at least three years.

→ Indirect protection of tenancy

- Unlike in the case of residential leases, where the tenant has a direct protection of tenancy, the tenant in a commercial lease has an indirect protection. The indirect protection of tenancy entails a right to compensation for the loss incurred by the tenant if the lease is not extended with a rent (and other terms) that correspond with market rent (and terms). It should be noted that the right to compensation applies even at the end of the term of the lease if the lease is terminated by the landlord. There are exceptions to the right to compensation, e.g. if the tenant has breached the terms of the lease (under certain circumstances), if the property in question is to be demolished or rebuilt and the landlord appoints replacement premises reasonably acceptable for the tenant. There is also an exception which requires a more sophisticated analysis of the interest of the landlords to terminate the lease against the interest of the tenant to continue the lease.
- The Swedish Lease Act provides for a special rent tribunal that can resolve certain disputes in relation to a commercial lease, and in a dispute regarding what the market rent is in connection with a termination for change of rent, the rent tribunal may also state what its opinion on market rent is. Such a statement is almost always followed, or, alternatively, the basis for a dispute on compensation for the tenant for a failure to extend the lease by the landlord.

TAX

→ Direct acquisition of a property

- An acquisition of a property gives rise to stamp duty (Sw. *stämpelskatt*). The stamp duty for registration of title for a real property is 4.25 per cent when the property is acquired by a legal entity. Otherwise, the stamp duty is 1.5 per cent.
- It may be noted that if there has been an intra-group transfer of a property prior to a share deal, the stamp duty may have been postponed. In such case, the share transfer triggers payment of that postponed stamp duty (based on the purchase price for that transfer and not the market value established in the share deal).

→ New mortgage

- When a new mortgage deed is taken out, there is a stamp duty of 2 per cent of its face value. It may be noted that the mortgage deed may be reused for example when the property is refinanced.





The Swiss real estate market is relatively sizable and sits within the top ten in Europe, alongside Russia and Sweden. Most activity is centred on the cities of Geneva and Zurich. Institutions (insurance companies and pension funds) and unlisted funds tend to predominate in terms of holdings and investment activity.

The Swiss real estate market has long been dominated by domestic investors. However, for several years now, more international investors are being attracted to the commercial real estate market, evidenced by increasing activity in recent years. Swiss law limits foreign acquisitions of residential properties in order to protect the residential market from speculation.

Switzerland presents five major submarkets for real estate investments, namely Zurich, Geneva, Basel, Lausanne and Bern, as well as their respective suburbs.

The safe returns offered by the Swiss market are especially attractive to core investors, but leveraged investors also find it valuable for diversification and hedging reasons. Indeed, total returns of direct investments are characterised by a low standard deviation, representing a low risk and therefore comparably low yields.

Market sizing

	Switzerland	Europe
Invested stock* (Total stock)	EUR 150bn (EUR 185bn)	EUR 3,380bn (EUR 8,150bn)
Liquidity ratio* (10y average)	0.5% (0.3%)	4.0% (4.5%)
2013 volumes (10y average)	EUR 1.0bn (EUR 0.5bn)	EUR 139bn (EUR 135bn)

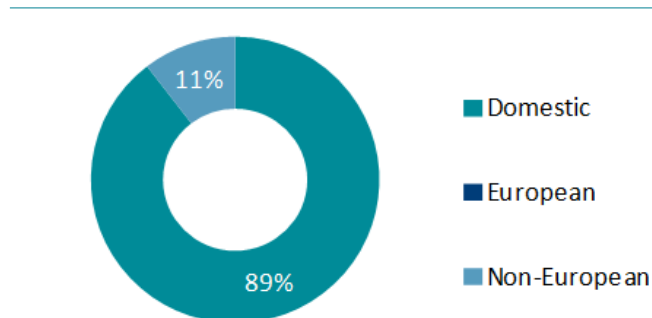
* 2012 figures

Market pricing - Geneva (Q4 2013)

	Office	Retail	Industrial
Current Yield	3.50%	3.50%	6.00%
Min/Max (10y)	3.50-5.50%	3.50-4.20%	5.75-6.50%
Yield definition	Net initial yield		

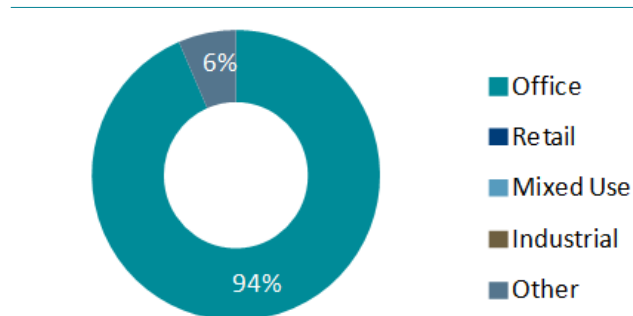
Source : DTZ Research

Investment activity by source of capital, 2013



Source : DTZ Research

Investment activity by asset type, 2013



Source : DTZ Research

PROPERTY LAW

TYPES OF OWNERSHIP

Single Ownership

(*Alleineigentum, propriété individuelle*)

- (Single) Ownership is defined as the right to use, receive the benefits of, and dispose of a property in the most absolute manner, subject only to a non-prohibited use.
- Any title, transfer or change in the ownership right in immovable property must be registered in the local land register (*Grundbuch, registre foncier*).

Co-ownership (*Miteigentum, copropriété*)

- Co-ownership is ownership by several persons of a share in a property which is physically undivided but fractioned into co-ownership units (*Miteigentumsanteile, parts de copropriété*).
- The division of the property is typically set-up and described in regulations (*Nutzungs- und Verwaltungsordnung, règlement d'utilisation et d'administration*).
- Co-owners have a pre-emption right in case of sale of an other co-ownership share (*Vorkaufsrecht, droit de préemption*).
- The co-owners have the right to demand the end of the co-ownership through the sale of the property or physical division; the right may be suspended by mutual agreement of the co-owners for up to 50 years but cannot be fully waived.

Condominium Property

(*Stockwerkeigentum, propriété par étages*)

- Condominium property is special type of co-ownership, assigning each co-owner a co-ownership interest in the entire property and a right to use a part of the property (unit) exclusively.
- The division of the property is set-up in a deed of constitution (*Begründungsakt, acte constitutif*) and described in regulations (*Stockwerkeigentümerreglement, règlement de propriété par étages*) which identify each unit, indicate its location and include a complete description of the private and common areas.
- Each co-owner has a right to use the common areas and shares the related service charges.

Building Right (*Baurecht, droit de superficie*)

- A building right is an easement on immovable property entitling a third party (*Baurechtnehmer, bénéficiaire du droit de superficie*) to erect or maintain a construction above or below ground of such ground (usually against payment of a rent).
- The third party entitled to building right enjoys a right in rem which may be mortgaged.
- The maximum term is 100 years.
- The owner of the underlying property has a pre-emption right (*Vorkaufsrecht, droit de préemption*) in case of sale of the building right and owner of the building right has a pre-emption right in case of a sale of the underlying property.

RIGHTS AFFECTING OWNERSHIP

→ Easement (*Dienstbarkeit, servitude*)

- An easement is a burden imposed upon a property, for the use and utility of another property (*Grunddienstbarkeit, servitude foncière*) or of a person (*Personaldienstbarkeit, servitude personnelle*).
- Easements are transferred with the related property.

→ Charge on Immovable Property (*Grundpfand, gage immobilier*)

- Charges are transferred with the related property.
- There are two practically relevant forms: mortgage and mortgage certificate :

Mortgage (*Grundpfandverschreibung, hypothèque*)

- May be created to secure any kind of debt, be it current, future or contingent.
- Is created in a specific rank and entitles the creditor in an event of default on the part of the debtor, to be paid out of the proceeds of the sale of the property.
- Any agreement stipulating that the property subject to the charge will become the property of the creditor in the event of default on the part of the debtor is invalid.
- The creation of more than one mortgage over the same property is possible.

Mortgage Certificate (*Schuldbrief, cédule hypothécaire*)

- Creates a personal debt secured by a charge on immovable property.
- Is created in a specific rank and entitles the creditor in an event of default on the part of the debtor, to be paid out of the proceeds of the sale of the property.
- Any agreement stipulating that the property subject to the charge will become the property of the creditor in the event of default on the part of the debtor is invalid.
- The creation of more than one mortgage certificate over the same property is possible.
- Two forms of mortgage certificates exist: one with physical certificate (*Papier-Schuldbrief, cédule hypothécaire sur papier*) and one without (*Register-Schuldbrief, cédule hypothécaire de register*).

Pre-emption right

- A pre-emption right is an option to acquire a property in case of a sale at a fixed price or at the price agreed with the acquirer, i.e. the right to substitute the acquirer in a real estate transfer.
- The most relevant types are:
 - The statutory pre-emption rights of co-owners and the parties of a building right.
 - Contractually agreed pre-emptive rights (for example in favour of a tenant or neighbour).
 - Statutory pre-emption rights by certain cantons or communes for residential properties (for example in Geneva).

ACQUISITION PROCESS: KEY STAGES

→ Authorization requirement

- The acquisition of non-commercial real estate by persons abroad requires an authorization; the authorization requirement applies to:
 - all real estate that is not used for trade or other commercial activities, i.e. residential properties, land, properties used by the state, etc.
 - private individuals and legal entities, namely
 - (i) to non-Swiss residents who do not have Swiss nationality; nationals of a EU member state who are resident in Switzerland and other non-Swiss nationals who have a residence permit C in Switzerland are exempt from the authorization requirement;
 - (ii) to legal entities incorporated abroad as well as to entities incorporated in Switzerland if they are directly or indirectly controlled by foreigners;
- An authorization is granted only in very few cases; for properties acquired for investment purposes, an authorization is usually not available. Foreign investors are thus precluded to acquire residential properties for investment purposes.

→ Negotiations

- As a preliminary step, a non-disclosure agreement is usually proposed by the seller/agents in order to allow access to the property, information and documentation.
- Often, the would-be purchaser issues a letter of intent which (in case of an asset deal) is typically non-binding even if marked as «binding»; a binding undertaking to purchase real estate in Switzerland requires a notarized deed. Sometimes, the would-be purchaser is asked to make a reservation payment that accrues to the seller if the purchaser does not sign and complete a purchase agreement.
- Discussions are sometimes pursued within the frame of a preliminary agreement providing for an exclusivity period during which the due diligence exercise is carried-out and at the expiry of which the would-be purchaser is expected to confirm its initial offer; more often, properties are sold in private auctions with several bidders with two or three phases.

→ Sale and Purchase Agreement (*asset deal*)

- A sale and purchase agreement for real estate (asset deal) must be made in notarised form before a notary at the place of the property in order to be legally binding.
- The agreements often follow typical standards that have been developed in notary practice.
- The warranties provided by law are typically fully excluded in the agreement but specific warranties are agreed between the parties; the warranties typically comprise:
 - correctness and completeness of tenancy schedule; no arrears in rent, no notices of termination etc.;
 - no registration in the register of contaminated sites;

- eventually no knowledge of contaminations and hazardous substances;
- no legal pledges and workmen's liens; no pre-emptive rights;
- no legal proceedings or orders by authorities relating to the property, often qualified by seller's knowledge;
- in case of yet to be built properties (Off-plan sales) full warranties for construction defects *are typically given*.

- The sale is completed by submitting the deed to the land registry for registration. The payment is made after registration:
 - in most German speaking cantons, the seller's bank issues a promise to pay addressed to the buyer according to which the seller's bank undertakes to pay the purchase price to the buyer immediately upon the registration of the sale in the land registry;
 - in most French speaking cantons and the canton of Ticino, the notary typically acts as escrow agent;

COMMERCIAL LEASES

Leases of buildings used for commercial purposes are covered by the ordinary provisions of the Swiss Code of Obligations.

→ Duration

- The duration of the lease may be of **indefinite term**; indefinite leases for commercial floors may be terminated with a notice period of 6 month (unless a longer notice period is agreed), or
- Of a **fix term** in which case the lease cannot be terminated prior to the expiration of the fix term (unless otherwise agreed);
 - the law provides neither for a minimum nor a maximum duration; however, perpetual leases are prohibited and leases of a very long duration may be found to be excessively binding on the parties by a court; 20 or 25 years are however normally regarded as admissible by market participants even if the tenant is granted one or two extension options of e.g. 5 years.
 - whether a fixed term contract is automatically terminated at the end of the fixed term or converted to a lease of indefinite term if no notice is given depends on the wording of the agreement.
- Often, extension options to extend the lease by an additional fixed term are granted to the tenant (for example two options of 5 years each).

→ Rent

- Rent may in principle be freely agreed between lessor and tenant (while the tenant may in principle challenge the rent within 30 days for duress or in case the rent has been substantially increased compared to the last tenant, this is very rare for commercial leases)
- Stepped rents and turnover rents are possible.
- In current market conditions in Swiss city centers, it is quite usual that the parties agree on a rent free period of a few month or contribution by the lessor to tenant fittings.
 - Evolution of the rent during the initial lease
 - . Rent is usually yearly adjusted in accordance with an indexation clause; such indexation is only valid if
 - the lease is entered into for a minimum duration of 5 years; and

- the Swiss Consumer Price Index is followed.

- An adjustment requires a notice by the lessor to increase the rent; the adjustment is not automatic; tenants must request and adjustment in case of a decrease of the index.

→ Service charges

- Service charges and other ancillary charges are only payable by the tenant if this has been expressly agreed in the lease agreement (in a specific list of the ancillary cost);
- Ancillary costs are costs for the maintenance of the lease object; cost for repairs, renovation, or amortization cannot be charged as ancillary costs;
- In practice, the tenant may however be made responsible for the repair, renovation and replacement of tenant fittings that do not form part of the lease object. More generally, although not tested in court, the tenant may take over additional repair, renovation or replacement obligations if these obligations have specifically been taken into account when agreeing on the rent.

→ Sale of property

- Commercial leases are automatically transferred to the new owner in case of a sale of the leased property;
- The new owner has the right to terminate the lease as per the next termination date provided by law in case of an urgent own need of the premises (in which case the tenant may claim damages from the former owner for the early termination).
- To avoid to become liable for damages, the owner does usually agree with the new owner in the sale and purchase agreement that the new owner takes over the lease and waives its right for early termination.

→ Transfer of lease

- The tenant may transfer the lease to a new tenant with the written consent of the lessor which may only be withheld for important reasons.
- In case the consent is given, the new tenant replaces the old tenant as tenant; the old tenant remains jointly and severally liable with the new tenant until the next contractual or statutory termination date but not for more than two years.

→ Sublease

- The tenant may sublet the lease object in whole or in part to a subtenant with the consent of the lessor; the lessor may withhold the consent only if the tenant does not disclose the terms of the sublease, if the terms are abusive or if the lessor has substantial disadvantages from the sublease.
- The tenant remains fully liable for the performance of the lease.

TAX

→ Direct acquisition of a property

- The acquisition of a property gives rise to notary fees, land register fees and - in many cantons - real estate transfer taxes. Notary fees, land register fees and - where applicable - trans-

fer taxes are calculated according to the tariffs of the canton where the property is located. As the fees and taxes may reach and even exceed 3% of the purchase price in some cantons even for large investment properties, it is important to check the costs in advance.

- The acquisition of real estate is in principle exempt from VAT in Switzerland. The parties may however subject the acquisition of real estate that is not exclusively used for private purposes to VAT voluntarily, which is often done to avoid negative VAT consequences on the side of the seller. In this case, 8% VAT is payable on such part of the purchase price (excluding the land price) that corresponds to the part of the property that is used for VATable purposes.

→ Acquisition of shares in a company holding a property

- In case of a share deal, notary fees and land register fees do typically not accrue; whether real estate transfer taxes accrue based on a beneficial change of ownership varies from canton to canton. In addition, securities transfer tax may become payable, if a party qualifying as securities dealer is involved on either side of the transaction.

→ Asset deal vs. share deal

- Even more relevant than differences in the transaction cost mentioned above are differences in the profit tax or real estate profit tax treatment. Federal profit tax as well as cantonal profit tax in cantons that do not know a special real estate transfer tax for legal entities are normally not triggered but remain latent such that the buyer inherits an existing tax burden. Whether the cantonal real estate transfer tax is triggered in a share deal varies from canton to canton. The parties do usually negotiate a compensation for taxes that are inherited by the buyer in the range from 0 to 100% .



Turkey attracts investors from across the globe, with overseas investors concentrating their activity towards Istanbul. Turkey has a large and dynamic market, with a relatively high quality labour force and economic location advantages, with easy access to regional markets.

The real estate market is comparatively small, but growing and has doubled in size since 2006. As a result investment activity remains relatively low; this is reflected in lower levels of liquidity.

Legislation to create REITs came into effect in 1995. There are currently 29 REITs trading on the Istanbul Stock Exchange. Their market share has been relatively low in recent years.

The retail sector has been the biggest capital recipient due to the relatively high growth potential of this sector and availability of investment grade property. The office sector is also being successfully targeted by investors, with more modern stock being developed and let to a growing number of tenants. There is lack of quality in the industrial property sector and demand is mostly driven by local companies.

Commercial and saving banks grant loans of varying maturities, underwrite, issue, and trade in securities for customers. They account for the largest portion of the business volume and are active in most types of banking operations. Besides, development and investment banks serve to finance the big investments and infrastructure constructions.

In order to catch its potential Turkey has to build confidence in its economy by ensuring transparency, political and regulatory stability.

Market sizing

	Turkey	Europe
Invested stock* (Total stock)	EUR 25bn (EUR 420bn)	EUR 3,380bn (EUR 8,150bn)
Liquidity ratio* (10y average)	0.3% (2.5%)	4.0% (4.5%)
2013 volumes (10y average)	EUR 0.1bn (EUR 0.4bn)	EUR 139bn (EUR 135bn)

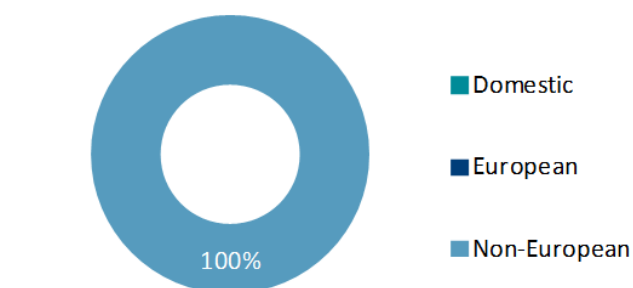
* 2012 figures

Market pricing - Istanbul (Q4 2013)

	Office	Retail	Industrial
Current Yield	7.00%	6.25%	8.50%
Min/Max (10y)	7.00-10.00%	6.25-12.00%	8.50-12.00%
Yield definition	Net initial yield		

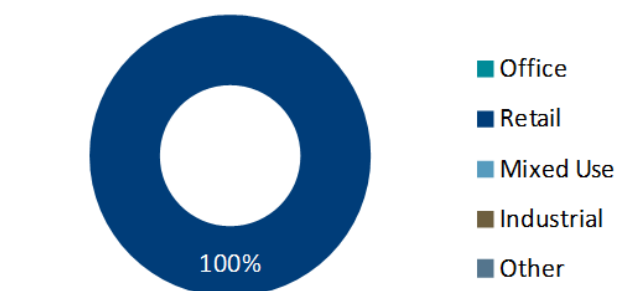
Source : DTZ Research

Investment activity by source of capital, 2013



Source : DTZ Research

Investment activity by asset type, 2013



Source : DTZ Research

PROPERTY LAW

TYPES OF OWNERSHIP

Ownership

- Turkish Civil Code defines ownership as the broadest in rem right which enables the owner to use, receive the benefits of, and dispose of a property, subject only to the law.
- The owner has the right to reclaim it from anyone withholding it from him or her and to protect it against any unwarranted interference.
- Any title, transfer or charge on the ownership right must be registered on the local land registry (*tapu sicili*)

Joint Ownership

- Defined by Law
- Joint ownership exists where several persons own a share on a property which is physically undivided.
- Unless otherwise stipulated, they are co-owners in equal measure.
- Each joint owner has the rights and obligations of ownership in respect of his or her share on the property/immovable, and said share may be alienated and pledged by him or her, or distained by his or her creditors.

Co-ownership

- Defined by Law
- Co-ownership exists where none of the co-owners can dispose of his share without the consent of the others and none of them holds a separate part of the property.

RIGHTS AFFECTING OWNERSHIP

Easement Right

- Is an in rem right where a parcel of land is encumbered in favour of another property such that the owner must permit the owner of the dominant property to exercise certain rights over it to or may not exercise certain of the rights attaching to his or her property for the benefit of the owner of the dominant property.
- An easement right is created by entry in the land registry.

Mortgage

- A mortgage may be created to secure any kind of debt, be it current or future (either definite or possible).
- The mortgaged property does not need to be owned by the debtor.
- Mortgages can be created for an amount debt described in Turkish Lira or the Turkish Lira equivalent of a debt in foreign currency.
- A mortgage is created in a specific rank, even if the secured amount is indefinite or variable, and it retains such rank notwithstanding any fluctuations in the secured amount.
- Unlike many countries in Europe, the beneficiary of the mortgage on a property/immovable cannot automatically possess the ownership of the mortgaged immovable (*lex commissaria*)

in case of the nonfulfillment of the debt, but the mortgage beneficiary must in any case put the immovable on sale, via Execution Office, in order to collect his/her receivables.

Pre-emption right

- The joint owners of a property may exercise their pre-emption right in the event of a sale of a portion of the jointly owned property by any of the joint owners.

ACQUISITION PROCESS: KEY STAGES

In case a foreign investor holds more than %50 of the shares of a company established in Turkey or has the right to appoint or dismiss the people having the management authority in the same company, such company can acquire the ownership of an immovable/real estate only by applying to the relevant Provincial Planning and Coordination Directorate under the Governorship of the relevant city, to obtain permission for the acquisition.

Land Registry Deed and Deed of Sale

- Land registry deed is a document showing that a real person(s) and/or legal person(s) own a specific immovable, an in rem right or a right in personam on an immovable. In case there is a discrepancy between the land registry deed and the official records of the Land Registry Office, the records of the Land Registry Office will prevail. In case an ownership of a property/immovable or another in rem right or a right in personam is transferred to others, such transfer can only be deemed as valid provided that the transfer is executed before the land registrar in the Land Registry Office. The official Deed of Sale is kept by the relevant Land Registry Office.

Promise to Sale Agreement

- The buyer and the seller of a property/immovable may execute a promise to sale agreement to set forth the conditions of the sale and where the buyer can be forced to sell and the seller can be forced to buy the property in line with the conditions set forth in the promise to sale agreement.
- The promise to sale agreement is only valid, if it is either executed before the Turkish notary public or before the land registrar. In case the promise to sale agreement is executed before the Notary Public, it is advisable to annotate the promise to sale agreement with the relevant land registry records.

COMMERCIAL LEASES

Lease of a property is covered in the relevant provisions of the Turkish Code of Obligations.

Certain provisions of the lease agreements may be freely agreed by the parties, including but not limited to the below;

- the initial rental
- the duration of the lease
- sub-lease restrictions on the lease property

However, lease agreements must comply with some mandatory rules including, but not limited to the below;

- in fixed term business place lease agreements, unless the tenant notifies in writing that he will evacuate the

leased area at the latest fifteen days prior to the termination of the lease agreement, the lease agreement will be renewed for a term of one year with the same conditions.

- any clause in a lease agreement which is against the benefit of the tenant other than determination of the lease amount is deemed invalid. However this rule will come in force in July 1st, 2020.

- a clause which imposes the tenant to increase the rental in foreign currency annually is prohibited, thus the landlord may only increase the annual rentals only after the expiration of the 5th year of the lease term. However this rule will also come in force in July 1st, 2020.

- In case the parties agree, the lease agreement can be annotated to the relevant land registry and thus the terms and conditions of the lease agreement continues even if the owner of the leased property is changed.
- The new owner of a property, in case there exists a tenant in the property, may force the tenant to evacuate the property by informing the tenant in one month commencing from the acquisition date and must file a lawsuit for evacuation in six months' time, provided that he is able to prove that he or his close relatives (the persons are numerous clauses as stated in the law) need the property.

TAX

→ Direct acquisition of a property

- The acquisition of a property gives rise to real estate transfer tax (RETT-tapu harcı), stamp duty, notary fee and value added tax (VAT).
- Real estate acquisitions in Turkey are subject to RETT, a charge of 4 per cent (2 per cent for the transferee and 2 per cent for the transferor) would be applied either on the purchase price of the real estate or on the official value of the real estate for real estate tax purposes. Whichever is higher, higher amount would be taken into account in the determination of the RETT base. Despite 2 per cent RETT liability of the transferor imposed by law, in practice, 2 per cent tax liability of the transferor would be borne by the transferee in addition to his RETT liability of 2 per cent. Hence, 4% RETT related to the acquisition of the real estate would be paid by the transferee.
- Stamp duty of 0,948% would arise when a promise to sale agreement is signed between the potential buyer and the seller in relation to the acquisition of real estates over the amount stated in the contract. If the parties have not considered signing a contract before the notary public, stamp duty and notary fees would not arise. Also, contracts that are not including any monetary amount are not subject to stamp duty of 0,948%.
- Real estate transactions taken place within the context of commercial activities (i.e. sales of real estate owned by companies) in Turkey are subject to VAT. The sales of real estates owned by non-commercial individuals are not subject to VAT. i.e. real estate transaction between individuals, are not subject to VAT.
- In certain circumstances, VAT exemption would be applied for the acquisition of the real estate from companies. If the hol-

ding period of a real estate in the balance sheets of companies is at least two years, the sale of such real estate is exempt from VAT. Companies who are engaging in business of real estate trading cannot benefit from such VAT exemption for such trading assets.

- Current VAT rates applied on real estate transaction are as follows;
 - a) The sale of flat, house or residence owned by companies, which have usable space with less than 150 m2 or equal to 150 m2, is subject to VAT of 1%
 - b) The sale of flat, house or residence owned by companies, which have usable space with more than 150 m2, is subject to VAT of 18%
 - c) The sale of office premises owned by companies are subject to VAT of 18%, regardless of its usable space size.
 - d) The sale of land owned by companies is subject to VAT of 18% regardless of its size.

→ Acquisition of shares in a company holding a property

- Acquisition of shares of the company holding real estates would not trigger RETT of 4%. The term of real estate company has not been defined in Turkish legislation.
- Share purchase agreements are subject to stamp duty of 0,948% over the amount stated in the agreement. Share transfer agreements of limited liability companies would need to be made before the notary public, so that the notary public fees of 0,113% per signature (not exceeding 25,874.70 TL) would be paid over the amount of the share price.
- Share transfers made by a company via share certificates or temporary share certificates (ilmuhaber) are exempt from VAT. Share transfers of an individual are not subject to VAT. Another VAT exemption in relation to the real estate transactions is that; the acquisition of participation interest (shares that is not represented by share certificates or temporary share certificates) of any company, is exempt from VAT as long as its holding period of time in the balance sheet of the company would be at least two years. Companies that are engaging in business of participation interest trading cannot benefit from such VAT exemption, for such trading assets. The sale of participation interest held less than two years are subject to 18% VAT.

→ Asset deal vs. share deal

- Acquisition of the shares is more favourable than direct acquisition of real estates in terms of tax savings. However share deal would cause the transfer of any business liability of the company to the acquirer. Therefore detailed due diligence study would be required to avoid undertaking undisclosed liabilities of the target company which may or may not be related to the immovable.





The Ukraine whilst offering the potential of one of the largest commercial real estate markets in Central and Eastern Europe has as yet failed to fulfil this potential despite a number of periods of active international investment into the market deriving largely from Western European, Israeli and, CIS funded sources. It remains one of the smallest markets by stock in Europe, although liquidity levels have picked up recently. Political instability in the country remains an issue.

Since its independence in 1991, Ukraine has attracted speculative investors, with funds going into both existing prime assets across all sectors, as well as development pipeline. This interest in Ukraine has typically followed periods of political change, following the post independence activity between 1996-1998 and 2004-2008. Whilst a majority of interest has been towards the capital city Kyiv, international retail investors and developers have been active within the 6 main regional cities of Ukraine.

Following a severe economic downturn in late 2008-2009, despite the economy demonstrating for the last 3 years moderate economic growth from a European comparison, investor confidence in Ukraine has continued to deteriorate along with the availability of debt financing driven by the exit of a number of foreign banks from the country.

Whilst affordable debt remains elusive, this is driving the need for investors to seek some joint-venture opportunities particularly for larger schemes. Investment assets presently placed to market demonstrate a material inverse liquidity relationship between lot size and liquidity due to the high costs and low availability of debt finance.

Market sizing

	Ukraine	Europe
Invested stock* (Total stock)	EUR 13bn (EUR 125bn)	EUR 3,380bn (EUR 8,150bn)
Liquidity ratio* (10y average)	0.6% (1.5%)	4.0% (4.5%)
2013 volumes (10y average)	EUR 0.1bn (EUR 0.3bn)	EUR 139bn (EUR 135bn)

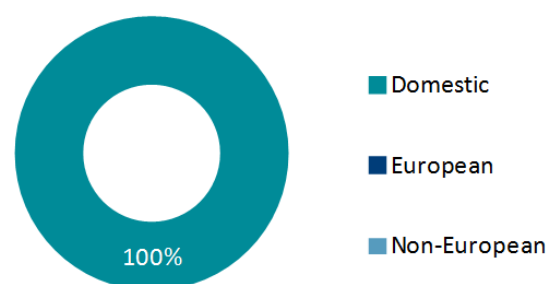
* 2012 figures

Market pricing - Kyiv (Q4 2013)

	Office	Retail	Industrial
Current Yield	12.50%	10.00%	15.00%
Min/Max (10y)	9.20-20.00%	9.60-16.00%	10.00-30.00%
Yield definition	Net initial yield		

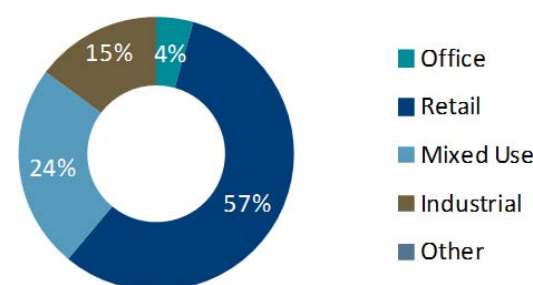
Source : DTZ Research

Investment activity by source of capital, 2013



Source : DTZ Research

Investment activity by asset type, 2013



Source : DTZ Research

PROPERTY LAW

RIGHT OF OWNERSHIP

- Ukrainian law defines ownership as the right to possess, use and dispose of the property.
- Rights to immovable property (including land plots and other real estate objects) are subject to registration in the State register of property rights to immovable property. Right of ownership arises upon state registration.
- Private property may be owned solely or jointly. A sale of a share in a property by one of joint owners is subject to other joint owners' pre-emptive right. Use and operation of a jointly owned property is subject to agreement between the owners.
- As a general rule, foreign companies and individuals have the same regime regarding acquisition and ownership to real estate as the Ukrainian ones, subject to certain exceptions.
- Foreign companies are not entitled to acquire ownership to agricultural land. If inherited, such agricultural land must be alienated during 1 year.
- Foreign companies may acquire non-agricultural land plots: (i) within the territory of settlements - in case of acquisition of buildings located on such land and for the purposes of construction related to business activities, or (ii) outside the settlements - only in case of acquisition of buildings located on such land.
- Conservatively, ownership to and operation of real estate by a foreign company requires registration of such company's presence in Ukraine. Foreign investors, therefore, are usually recommended to structure their property businesses by means of establishing Ukrainian subsidiary companies.
- Change of a permitted land use (re-designation) is only possible following the land allotment process which requires approvals from state or municipal authorities and a number of governmental agencies.
- With regard to agricultural land designated for commercial agriculture and for individual farming: there is currently moratorium prohibiting sale and re-designation of such land.

RIGHTS OF USE

Commercial leases

- Lease agreements must be concluded in written form. Lease agreements for a term of 3 and more years are subject to notarization and the relevant lease right - to state registration.
- If ownership to the leased property passes to another owner, the rights and obligations of the previous owner under the lease agreement transfer as well.
- Ukrainian law provides for an extended catalogue of conditions of a lease agreement, however, with certain exceptions, parties are free to determine conditions on their own.

Land lease

- Legal entities and private individuals are entitled to lease private-, municipal- or state-owned land plots.
- Lease of state- or municipal-owned land plot should be based on the decision of the relevant authority, empowered to dispose of such land plot.
- Acquisition of a lease of a state- or municipal- owned unde-

veloped land plot should be based on a public auction; this rule does not apply if the prospective tenant is the owner of a property situated on such land.

- Term of a lease agreement cannot exceed 50 years. The right of land lease is subject to state registration.

Emphyteusis and superficies

- Ukrainian law provides for the right to use the land plot for agricultural purposes by virtue of an agreement with owner of such land plot (right of emphyteusis). The right of emphyteusis is subject to state registration.
- Owner of a land plot is entitled to grant it to a third party for the construction purposes (right of superficies). This right derives from a relevant agreement or a testament and is subject to state registration. Upon completion of the construction the land user is entitled to obtain right of ownership to the constructed buildings and facilities located on such land plot.
- Currently, due to lack of regulation, emphyteusis and superficies are close to having no practical implementation.

ENCUMBRANCES

Easement (servitude)

- Easement (a right to use others' property), may be established with regard to a land plot or real estate for satisfaction of needs of the third parties. It may have a form of a right of passage or transit or a right to install and use engineering infrastructure.
- Easement may be based on an agreement, statute, testament or court decision and is subject to state registration.
- Easements may be established for a fixed or indefinite term.
- In practice, easements are used as alternative to land lease, for the purpose of access to and use of parts of industrial sites, mining sites, sea ports, etc.

Mortgage

- Mortgage is a type of security over property, whereby the mortgagee has the right to retain or sell the mortgagor's property if the mortgagor fails to perform the secured obligation.
- Mortgage agreement is subject to notarization; mortgage, as encumbrance, is subject to state registration.
- Real estate and underlying land plot are subject to mortgaging together if they are owned by the same proprietor.
- A notice period for the foreclosure process is 30 days, this period may not be waived contractually.

ACQUISITION PROCESS: KEY STAGES

Asset deals

- Purchase of real estate property should be based on a written agreement which should be notarized. Notarization of the agreement is subject to 1% notarial fee.
- Foreign companies intending to purchase or lease real estate have to obtain prior written consent from the local state authorities.
- State- or municipal-owned, undeveloped land plots are subject

to sale at auctions (public sale). There is a number of exclusions whereby the public sale is not applicable (e.g. the owner of a building located on the state or municipal land is entitled to buy out such land plot without an auction).

- Purchase of a building should go together with purchase of the underlying land plot (if owned by the same seller). Although the law has rules providing for «automatic» transfer of title to land in case the building is purchased (and vice versa), in practice, purchase of these two properties require separate agreements. A similar approach also applies to mortgage.
- If the purchased property is situated on a land plot that is leased, the lease does not transfer automatically. Although the law has some provisions to the contrary, in practice, the purchaser has to re-execute the lease agreement with the land owner.
- The buyer's right of ownership shall be registered in the State register of property rights to immovable property by the notary immediately after signing or at any time later by the state registration authority should the sale and purchase contract provides for the condition precedent (e.g. payment by instalments).

→ Equity deals

- The most common form of a Ukrainian company set up to own property is limited liability company (LLC). The shares in a LLC may be sold, purchased and pledged.
- Foreign investors have the same rights with regard to establishment or acquisition of shares in Ukrainian companies, as the Ukrainian investors.
- Acquisition of certain types of immovable property (e.g. an integral property complex or a structural sub-unit of an undertaking) which results in acquisition of control over an undertaking by the acquirer may qualify as concentration. Such concentration requires a prior merger clearance of the Antimonopoly committee of Ukraine if any of the following thresholds are triggered: (A) Turnover/assets-based (for the last fiscal year): the combined worldwide asset value or turnover of the parties exceeded €12 million; and (i) the value of each of at least two of the parties' total worldwide assets or turnover exceeded €1 million; and (ii) the value of assets or turnover of at least one party in Ukraine exceeded €1 million; or (B) Market share-based: either individual or combined market share of the parties in the market concerned or the adjacent market exceeds 35%.

→ Investment agreements (equity contribution agreement)

- Investment agreements are used for sale and financing of a property that has not yet been constructed.
- The seller is committed to erect the property in accordance with agreed specifications, price and deadline.
- The purchaser pays the price in full or in instalments, along with the construction progress.
- Upon completion of the construction and commissioning of the building the buyer (investor) applies to the state registration authority for registration of its right of ownership to the invested real estate.

→ Preliminary contracts

- Preliminary contracts provide for the material conditions of the main (definitive) agreements and determine the parties' undertaking to conclude such main agreement within an agreed term (which, however, may not exceed 1 year).
- Preliminary agreements may stipulate conditions precedent and exit clauses regarding execution of the main agreement.
- Preliminary agreements are subject to notarization in case notarial form is required for the main agreements they concern.

→ Other regulatory aspects

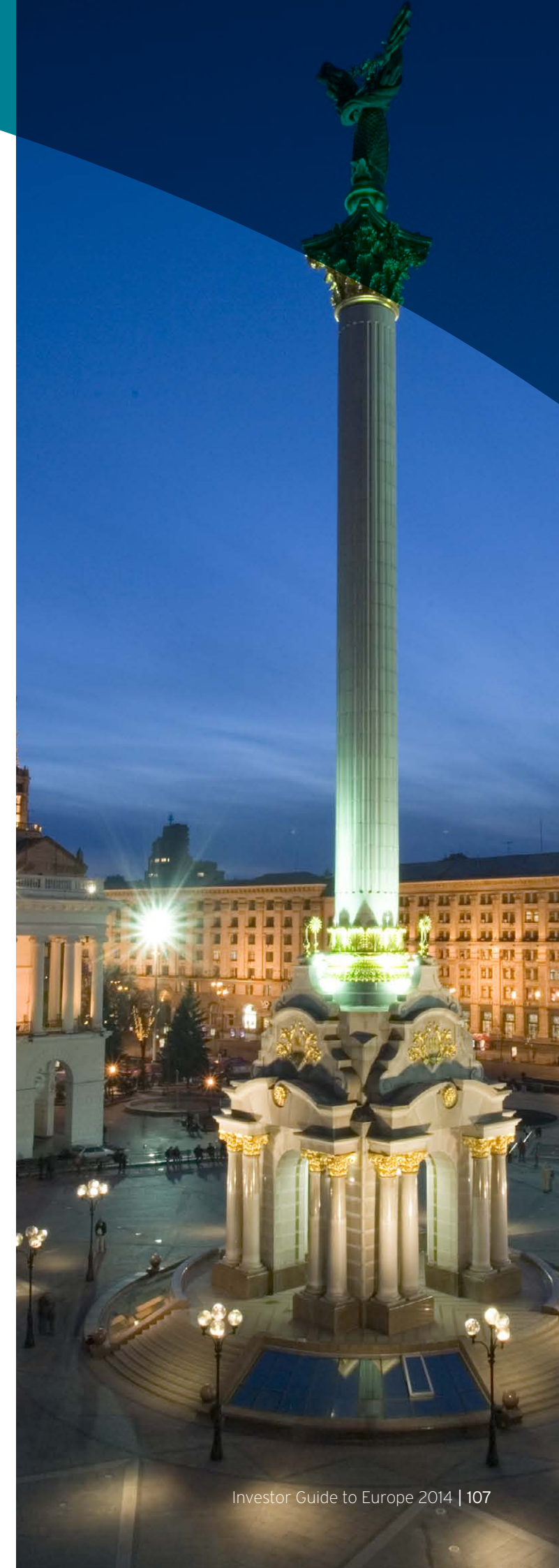
- Acquisition process by foreign investors should comply with certain currency and other banking regulations related to transfer of funds in foreign currency to Ukraine and opening of the special investment bank account.
- For the purposes of special legislative protection and tax benefits related to the further sale, acquisition of immovable property by the foreign investors is subject to registration as a foreign investment within the local state authorities.
- If financing of property acquisition implies a loan to a Ukrainian company from a foreign bank or a company, such loan is subject to the registration with the National Bank of Ukraine and the following limitations regarding rate of interest. The following maximum permitted rate of interest established under a fixed rate interest loans (for loans in the currencies of the 1st group of the currency classification system adopted by the NBU, such as USD or EUR): (i) with a term less than one year – at 9.8 per cent per annum; (ii) with a term from one to three years – at 10 per cent per annum; (iii) with a term of exceeding three years – at 11 per cent per annum. The maximum permitted rate of interest under a floating rate interest is three month USD LIBOR plus 7.5. Interest rates are viewed by the NBU as inclusive of contractual interest, any fees, default interest and other charges provided by the respective loan agreement.

CONSTRUCTION OF REAL ESTATE OBJETS

- Construction and commissioning of a real estate property in Ukraine is subject to the following key permitting stages (may somewhat vary depending on the category of construction complexity):
 - Land acquisition.
 - Receipt of source data for engineering and design works.
 - Preparation of the construction project and its approval by a licensed institution.
 - State audit of the construction project (if required by the category of complexity).
 - Receipt of a permit for execution of construction works from the relevant state construction inspection.
 - Commissioning of the newly created or reconstructed real estate object after completion of the construction and receipt of the relevant commissioning certificate or declaration of conformity.

TAX

- Apart from 1% fee for notarization of the property purchase agreements, sale of real estate is subject to the Pension Fund duty at 1% rate from the contract value payable by the buyer.
- Profit from sale of immovable property by a foreign company is subject to 15% withholding tax (WHT). In case provisions of a relevant double tax treaty are applicable, the rate may be different (usually, lower).
- Value added tax at the rate of 20% is applicable to proceeds from sale or lease of real estate property, other than land, by a company; (exemptions and exceptions exist, however eligibility of property businesses to such exemptions and exceptions is not customary).
- Subject to certain exceptions and reservations: (a) personal income tax (PIT) from sale of property is 5% for Ukrainian nationals and 17% for foreign individuals; (b) PIT regarding rent receivables is 17%. (Note: the 17% rate applies with regard to the amount in excess of about EUR 1100 (10 minimal salaries); the amount below is subject to the 15% rate).
- Residential properties are subject to the property tax payable by both companies and individuals. The rate ranges from 1 to 2.7 per cent of the minimal monthly salary (currently, about EUR 110) per the 1 square meter of the residential area depending on the property type and area and may be subject to certain deductions.
- Land payments are payable by both individuals and legal entities either as land tax (if owned) or rent (if leased). Tax rates depend on the estimated value and category of land. If the value is unspecified the tax amount is assessed with the application of the respective index depending on different factors: category of land, the amount of people living in the populated locality, etc. Usually, the annual land payments are within range from 1 to 10 per cent of the land valuation.





UNITED KINGDOM



The United-Kingdom is one of the largest commercial real estate markets globally, and in terms of invested stock is the largest across Europe.

The UK attracts investors from across the Globe, with many overseas investors concentrating their activity towards Central London. Activity across the rest of the UK is relatively lower and focussed more towards the key cities and prime shopping centres. Domestic activity across the UK is strong and typically represents over half of total activity. However over the last decade we have consistently seen net sales from domestic investors.

The UK also has a well established investor base of its own, with many institutional investors and listed property companies. Legislation to create REITs came into effect in 2007. The UK also has a well established fund management sector for both listed and unlisted funds, with many funds domiciled offshore in UK or foreign jurisdictions. The depth and breadth to the investor base supports strong levels of liquidity.

Given the maturity of the market it is relatively easy to establish new funds in the UK, subject to meeting regulatory requirements.

Debt funding is also relatively easy to secure, especially for core assets. The majority of funding is provided by both domestic and overseas banks which are active in the UK market. In recent years there has been growing activity from institutional lenders (predominantly insurers) and private and institutional debt funds.

Market sizing

	United Kingdom	Europe
Invested stock* (Total stock)	EUR 670bn (EUR 940bn)	EUR 3,380bn (EUR 8,150bn)
Liquidity ratio* (10y average)	8.0% (7.5%)	4.0% (4.5%)
2013 volumes (10y average)	EUR 52bn (EUR 50bn)	EUR 139bn (EUR 135bn)

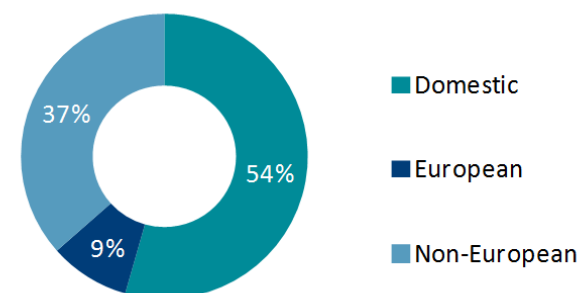
* 2012 figures

Market pricing - London (Q4 2013)

	Office (City)	Retail (West End)	Industrial (Heathrow)
Current Yield	4.75%	3.50%	5.50%
Min/Max (10y)	4.25-7.00%	3.50-5.75%	4.00-7.50%
Yield definition	Net initial yield		

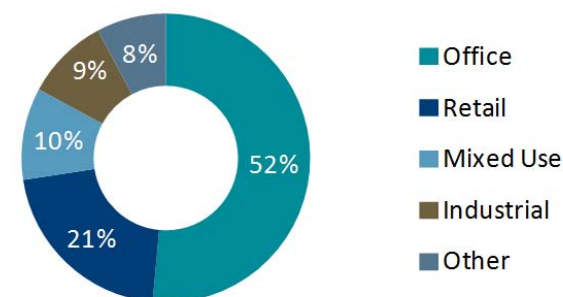
Source : DTZ Research

Investment activity by source of capital, 2013



Source : DTZ Research

Investment activity by asset type, 2013



Source : DTZ Research

PROPERTY LAW

TYPES OF OWNERSHIP

→ Freehold

- Non-time limited interest which effectively represents absolute ownership of the land itself, the subsoil below it, the airspace above it and any buildings constructed on it.
- Transfer of a freehold interest operates as a statutory trigger event requiring registration at HM Land Registry.

→ Commonhold

- An alternative form of freehold land ownership introduced by statute in 2004 but rarely encountered in practice it provides for freehold ownership of an individual unit within a larger freehold development (such as a unit within an industrial estate).

→ Leasehold

Long leasehold

- Used by freehold landowners to maintain the integrity of their estates whilst generating a capital return; from the perspective of long leasehold tenants long leases are valuable assets and «owning» a long lease is often considered akin to owning a «virtual freehold» in the relevant property.
- Typically the term of a long lease will be for 99, 125 or even 999 years and a price («premium») paid for its grant.
- Usually a negligible rent payable (as a «premium» will have been paid) although in the commercial arena there may be an element of gearing requiring the long leasehold tenant to pay an agreed percentage of the annual income received from occupiers to the freeholder.
- Generally transferable to third parties by assignment or under-letting although in some instances the consent of the freeholder may be required.
- In the commercial sector alterations are often permitted without the consent of the freeholder.
- Whilst the freeholder will have a right to terminate («forfeit») the lease if the long leasehold tenant breaches its obligations in the lease in practice there are a number of statutory protections to relief from forfeiture to provide the tenant with protection.
- Subject to mandatory registration at HM Land Registry.

Occupational leases (commercial)

- Used by freehold or long leasehold owners to generate an income stream.
- Historically leases tended to be granted for 25 years however recent market research suggests that the average lease term has now dipped significantly below 10 years.
- Usually an open market rent is payable (quarterly in advance) and the lease will provide for there to be an upwards only rent review to the market rent every five years. Fixed rent and index-linked increases are, however, becoming more common.
- In addition to paying the rent the tenant will generally be responsible for covering the full costs of repair, reinstatement, maintenance and insurance of the property.

- The lease will restrict the tenant's right to assign, underlet, use and alter the property, often requiring the owner's consent before such actions can be undertaken.
- Tenants occupying property for the purposes of their business have an automatic statutory right to renew their lease (at market rent) on expiry unless that right has been excluded before the original lease was granted. If the lease has not been «contracted out» of the security of tenure regime the owner can only resist the grant of the renewal lease on a limited number of grounds.
- Leases that are registrable at HM Land Registry (ie granted for more than 7 years) must contain certain prescribed clauses.
- A different regime applies to residential property.

RIGHTS AFFECTING OWNERSHIP

→ Easement

- A right which benefits one piece of (dominant) land and burdens another (servient) piece of land, note in this context «land» includes buildings. The two pieces of land affected must be in different ownership.
- A legal easement must either take effect as a right «in fee simple» or be granted for a fixed term and if it concerns registered land must be registered at HM Land Registry.
- Interference with an easement gives rise to an action for private nuisance.

→ Mortgage

- A type of security.
- Whilst a charge (by way of legal mortgage) over property does not operate to transfer title to the property to the lender, it creates a legal interest in the property and affords the lender certain rights including a statutory power of sale in the event of borrower default (as the statutory powers are fairly limited the lender will look to extend them under the terms of the security documentation).
- Must be created by «deed» and, in the case of registered land, registered at HM Land Registry.

→ Rentcharge

- A means of providing for the enforcement of «positive covenants» or for securing the recovery of costs for the provision of services or the carrying out of maintenance or repairs.

→ Contractual rights

- A variety of other contractual rights affecting land can also be created such as option/pre-emption rights and licences to occupy.
- One key category of rights to which property can be subject are restrictive covenants. They affect freehold land and represent a documented agreement by an owner to restrict the use and enjoyment of its land in some way for the benefit of another's land. Depending on the drafting of the covenant it may be enforceable not only as between the original contracting parties but also by their respective successors in title.

ACQUISITION PROCESS: KEY STAGES

The general position in the United Kingdom is that any individual or legal entity, whether resident or non-resident can purchase property. There are, therefore, no foreign direct investment restrictions. Although the following briefly summarises the process involved in the direct acquisition of property it is often the case in practice that high value properties (or portfolios of properties) are acquired indirectly through a variety of different corporate vehicles including through buying shares in a real estate investment trust (REIT) or investing in units in a property unit trust.

→ Marketing

- The marketing of commercial property is usually carried out on behalf of the seller by a property agent.

→ Negotiation

- Commercial negotiations commence once an interested party has been identified.
- Until a formal sale contract is agreed, signed and dated («exchanged») neither party is legally bound and so there is flexibility to conduct negotiations without the need to worry that binding legal commitments may arise unintentionally. This is the case even if the parties sign «heads of terms» recording the principal commercial terms of the transaction.
- A serious buyer may require an exclusivity period within which to try to agree terms with the seller and lawyers may be instructed to draw up an exclusivity agreement giving the buyer a period of time within which to undertake its due diligence and «exchange contracts» for the purchase.
- Subject as mentioned above lawyers would usually only get involved once the seller and buyer (via their respective agents) have agreed terms.

→ Pre-exchange

- Once terms have been agreed the buyer's lawyer will investigate the seller's title to the property and carry out due diligence. Generally a seller of property is not under an obligation of disclosure to the buyer and the principle of «caveat emptor» (let the buyer aware) is adopted.
- It is also likely that the buyer will instruct a number of other professionals to advise it on the transaction. By way of example surveyors will almost certainly be asked to carry out condition surveys of the property and any buildings on it.

→ Sale contract

- The sale contract will be negotiated by the parties' lawyers and will contain all the terms agreed between the seller and the buyer including any special conditions required to deal with matters revealed by the buyer's due diligence.
- The buyer become legally bound to complete the purchase and the seller to sell, subject to any conditions specified in the sale contract, once the sale contract has been exchanged (formally entered into).

- Typically a deposit of between 5% and 10% of the purchase price is payable by the buyer on exchange. If the buyer fails to complete the purchase then the seller may retain the deposit.

→ Transfer

- The sale of the property will be completed on the date specified in the sale contract by way of completion of a separate document known as a «transfer». Sometimes completion will take place on the same day as exchange although often there is a gap between exchange and completion.
- The balance of the purchase price will be paid on completion.
- The transfer needs to be registered at HM Land Registry. Although as between seller and buyer title to the property passes on completion the buyer will not become the legal owner of the property until it has been registered as proprietor at HM Land Registry. It is the responsibility of the buyer's lawyers to ensure that this happens.

TAX

→ Direct acquisition of a property

- The acquisition of a property (whether freehold or leasehold) gives rise to stamp duty land tax (SDLT).
- SDLT is payable by the buyer/tenant (as appropriate).
- On a freehold acquisition the rate payable is a percentage of the purchase price - 4% on acquisition of commercial property over £500,000 and up to 15% on purchases of residential property; there are specific rules for calculating the SDLT payable on the rental element of new leases which have regard to the «net present value» of the lease.
- From 1 April 2015 SDLT will cease to apply to transactions involving land in Scotland and will be replaced by the land and buildings transaction tax (LBTT). The LBTT rates have not yet been announced but it is known that it will be a so-called progressive tax with a nil rate band and at least two other thresholds above that.
- Devolution to the Welsh Assembly of SDLT on land in Wales is currently also under discussion.
- Value added tax (VAT) which is a form of sales tax may be payable in addition. The default position is that the sale or purchase of property in the United Kingdom is not subject to VAT however a commercial property owner may opt to tax its property so as to treat any supplies it makes in relation to the property as being subject to VAT. The VAT rate is currently set at 20%. Even if a property has been the subject of an option to tax it is possible to treat its sale as falling outside the scope of VAT if it is let to tenants provided the buyer continues that letting business, also opts to tax and notifies the United Kingdom tax authorities of such option (a so-called transfer of a going concern).
- The sale and purchase of residential property is not subject to VAT.

→ Acquisition of shares in a company holding a property

- SDLT does not apply to the acquisition of shares in a company owning a property as opposed to a purchase of the property itself. The rate of duty on the transfer of shares in a United Kingdom incorporated company is currently 0.5%.
- VAT is not payable on a share purchase.

→ Holding investment property

- Property rental business profits from United Kingdom land are subject to corporation tax or income tax at rates that depend on the nature of the property owner: 23% corporation tax reducing to 21% in April 2014 and 20% in April 2015 for United Kingdom resident companies; 20% income tax for non-United Kingdom resident companies; and up to 45% income tax for individuals.
- Exemptions from such tax are available to, for example, charities, pension funds and sovereign wealth funds.
- Profits are calculated broadly by reference to accounts prepared on generally accepted accounting principles but with some detailed modifications.
- Capital allowances (tax depreciation) are available to set off against such profits in respect of capital expenditure on certain assets that are used in the property rental business, particularly plant and machinery at rates of 18% per year on the reducing balance of expenditure for non-integral features and 8% on such balance for integral features.
- There is also an annual tax on enveloped dwellings (ATED) that applies to high value (over £2m) residential properties that are owned by companies, partnerships including companies and collective investment schemes at flat scale rates of up to £140,000 per year for a property worth over £20 million, though there are a number of reliefs and exemptions available for property developers, property traders and property investors who carry on their businesses on a commercial basis and with unconnected persons.

→ Disposals

- Gains on disposals of properties held as investments attract corporation tax for United Kingdom resident companies at the rates mentioned above and capital gains tax (CGT) at the rate of 28% for United Kingdom resident individuals, but do not attract United Kingdom tax for non-United Kingdom residents unless the gains are ATED-related gains made by sellers to which the ATED applies in which case they attract CGT at the rate of 28%.
- Income profits on sales of properties acquired and held as trading stock or developed and sold in the course of a trade attract corporation tax at the rates mentioned above for United Kingdom resident companies and non-United Kingdom resident companies that trade in the United Kingdom through a permanent establishment and income tax at rates up to 45% for individuals.
- Gains of a capital nature made by persons that acquire (or develop) land with the sole or main purpose of realising a gain from disposing of the land or anything deriving its value from the land (when developed) may be subject to United Kingdom income tax if their activity is not subject to United Kingdom tax on trading profits, though non-residents may be able to obtain relief from such tax under any applicable double tax treaty with the United Kingdom.



DIFFERENT LEGAL SYSTEMS

It should be noted that for principally historical reasons the United Kingdom actually has three different and distinct legal systems – one each for England and Wales, Scotland and Northern Ireland.

Whilst there are many similarities between the three systems and certain «laws» that apply throughout the whole of the United Kingdom there are also important differences between the systems. This is particularly relevant to the arena of property law where the location of the property will determine which legal system is employed, for example a property in Scotland will be subject to the underlying property law of Scotland and not that of England and Wales.

The high-level summary of «Property Law» and the «Acquisition Process: Key Stages» set out above is based on the position under the law of England and Wales. A brief note of some of the key differences in the Scots and Northern Irish legal systems follows.

→ Scots law

- The terminology used differs markedly. For example under Scots law absolute ownership is known as «heritable» title. It is very similar, but not identical, to the English and Welsh concept of «freehold».
- Long leasehold titles are not so common in Scotland. Indeed any new long leasehold titles may not be granted for more than 175 years.
- Commercial landlords and tenants under the Scottish system are not subject to the same statutory restrictions as impact the landlord/tenant relationship in England and Wales and are, generally speaking freer to contract as they see fit. For example, business tenants do not have an automatic statutory right to renew their lease (although there is a limited protection for shop tenants).
- A servitude is the nearest Scottish equivalent of an easement and a standard security (a statutory creation) is the Scottish equivalent of a legal charge.
- The sale contract in Scotland is normally created by means of formal letters exchanged between the parties' solicitors (known as «missives»). The sale contract is exchanged when the missives are concluded. It is also fairly unusual for a Scottish sale contract to include a deposit.

→ Northern Irish law

- An additional category of ownership in Northern Ireland are «fee farm grants». Although it is no longer possible to create a fee farm grant many are still in existence. They effectively replicate the English and Welsh concept of freehold ownership but bear some characteristics of long leaseholds, including payment of rent and forfeiture rights.
- Whilst a significant number of concepts are familiar the statutory regime is very different in Northern Ireland, with much legislation dating from before 1925 still in force. In particular there are some marked differences in the law governing the relationship between commercial landlords and tenants, for example, it is not possible for business tenants to «contract out» of the Northern Irish security of tenure regime.
- Although it has a similar Land Registry system to England and Wales a significantly higher proportion of land remains unregistered in Northern Ireland.

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